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THE

[illegible]NERAL CLAUSES ACT, 1897

(X OF 1897)

WITH NOTES AND APPENDICES.



CALCUTTA GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
19[illegible]0

PREFACE

THE second annotated edition of the General Clauses Act, 1897, has been exhausted and on account of several amendments of the Act has become out of date A new edition on the same lines as its predecessors is now issued It contains critical and historical notes which, it is hoped, may be of use to those concerned with Indian legislation

The two appendices which were added to *the second edition by the late Mr M D. Chalmers,* formerly Law Member of the Viceroy's Council, have been retained and brought up to date The first reproduces a note reviewing the history and present position of the Indian Statute Book. The second, which is a digest of the main rules of statutory drafting as applied to India and is followed by some illustrative forms, is based on a memorandum of English statutory drafting drawn up by Sir C Ilbert, K C S I, Parliamentary Counsel to the Treasury and formerly Law Member of the Viceroy's Council.

NEW DELHI;
March 1950.

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THE GENERAL CLAUSES ACT, 1897.

(X OF 1897.)

[*11th March, 1897*]

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887

1868 WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868
1887 and 1887, It is hereby enacted as follows —

Preliminary

1. (*1*) This Act may be called the General Clauses Act 1897 Short title

* * * *[1]

This Act does not effect any change in the existing law Its object, like that of the Acts it repeals and consolidates is to shorten the language of statutory enactments and to provide for uniformity of expression where there is identity of subject matter Objects of Act.

2 The first enactment of the kind in England was Lord Brougham's Act (13 & 14 Vict c 21) which was passed in 1850 The provisions of that statute were adapted to India, and somewhat amplified by the General Clauses Act 1868 (I of 1868), and the General Clauses Act, 1887 (I of 1887) was a further extension of the same principle In so far as those Acts contained statutory definitions it was obviously expedient that the legislative dictionary, as it may be called, should be contained in a single enactment, and similar considerations applied though less strongly, to rules of construction It also seemed desirable to take the opportunity of making some additions suggested by later experience and in particular to incorporate such provisions of the Interpretation Act, 1889 (52 & 53 Vict, c 63) as might be applicable to India That statute, like the Indian Act of 1887, was drafted by Sir C Ilbert, and is in effect History of legislation

a careful

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[1] The word "and" and sub-section (2) were repealed by Sch II of the Repealing and Amending Act 1914 (X of 1914)

a careful revision and extension of the latter. For example, the definition of "British India" in the English Act of 1889 is merely an expansion of the definition given by the Indian Act of 1868. Its legal effect is the same, but it is more intelligible and it avoids a reference to another enactment The present Act has this further advantage, that it will tend to secure uniformity of language and construction in Indian and English legislation in so far as both deal with the same subject-matter. As India is subject to English legislation, and as its legislative powers are derived from the English Parliament, the advantages of formal uniformity are obvious (See Statement of Objects and Reasons, *Gazette of India*, 1897, Pt. V, p. 38)

3 Each of the local legislatures has passed an Act similar to this

(*a*) The Madras General Clauses Act, 1891 (Madras Act I of 1891 as amended by Madras Acts II of 1896 and XI of 1920).

(*b*) The Punjab General Clauses Act, 1898 (Punjab *Act I of 1898 as amended by Punjab Act* VI of 1918)

(*c*) The Burma General Clauses Act, 1898 (Burma Act I of 1898 as amended by Act I of 1903 and Burma Act I of 1919).

(*d*) The Bengal General Clauses Act, 1899 (Bengal Act I of 1899 as amended by Bengal Acts I of 1903 and I of 1914)

(*e*) The Bombay General Clauses Act, 1904 (Bombay Act I of 1904 as amended by Bombay Act IV of 1905)

(*f*) The United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904).

(*g*) The Eastern Bengal and Assam General Clauses Act, 1909 (Eastern Bengal and Assam Act I of 1909)

(*h*) The Central Provinces General Clauses Act, 1914 (Central Provinces Act I of 1914)

(*i*) The Bihar and Orissa General Clauses Act, 1917 (Bihar and Orissa Act I of 1917).

(*j*) The Assam General Clauses Act, 1915 (Assam Act II of 1915 as amended by Assam Act I of 1922)

4. The

4 The present Act is a consolidating as well as an extending measure For the construction of a consolidating Act, see *Craies on Statute Law*, pp 125 127 and 301 304, 3rd Edition As a consolidating measure it does not purport to effect any change in the provisions it purports to repeal

5 The present Act can be used for construing the Acts of the central legislature only. It cannot except where any specific provision (*e g*, sections 12, 26 and 31) is clearly of universal application, be used to interpret the Acts of provincial legislatures [See *Hoomesh Chandra Bose* v *Soorjee Kanto Roy* (1880) I L R 5 Cal 713 *Queen Empress* vs *Pherojshah Hormusjee* (1899) 1 Bom L R 164] Its provisions apply expressly to Acts but section 20 provides that expressions used in rules etc made under Acts shall have the same meaning as in the Act which confers the power to make the rules Words therefore used in statutory rules and defined in the General Clauses Act will have the meaning assigned to them therein if they are used in the Act under which the rules are made and all the provisions of the General Clauses Act will be applicable for the construction of rules which by the Act under which they are made are to have effect as if enacted therein The rules of interpretation laid down in the General Clauses Act also may be safely applied for the construction of statutory rules In some rules *e g* in the Indian Arms Rules 1920 made under section 17 of the Indian Arms Act 1878 there is a specific provision to the effect that the General Clauses Act shall apply for the purpose of interpreting the rul

6 Some of the provisions of the Act apply to Acts passed before it came into force while others do not In this it differs from the Act of 1887 which applied only to Acts made after it was passed and follows the Interpretation Act (52 & 53 Vict c 63)

Sections 5 (3) 15 16 20 21 25 and 26 apply to any Act See *Bhaplandas* v *Secretary of State* (1924) I L R 48 Bom 87 affirmed by the P C (1927) I L R 51 Bom 725 where section 21 of the Bombay General Clauses Act which is similar in terms to section 21 of this Act was held to have retrospective effect Section 12 applies to any enactment now in force or hereafter to be in force Section 13 applies to all Acts Sections 3, 6 7 (1) 8 9 (1) 10 (1) 11 14 (1) 17 (1) 18 (1) 19 (1), 24 27 and 28 (2) apply only to subsequent enactments.

7 Thus

7. Thus definitions in section 3 are held not to apply to Acts passed before this Act came into force or the Act of 1868 was passed—*Rash Behari vs Narain Das* (1922), 27 C. W. N. 231. Sections 4, 7 (2), 9 (2), 10 (2), 14 (2), 17 (2), 18 (2) and 19 (2) apply to certain specified previous enactments. Sections 5 (1) & (2), 22, 23, 24, 28 (1) apply to future Acts only.

2. [*Repeal*] *Rep. by the Repealing and Amending Act, 1903 (1 of 1903).*

General Definitions.

[...]nitions. **3.** In this Act, and in all Acts of the Governor General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

For the application of the definitions mentioned in this section to the Acts of provincial legislatures and for the retrospective operation of the section see paras. 5 and 7 of notes to section 1.

2. As the definitions are numerous, they have been arranged in alphabetical order. All of them are governed by the introductory words "unless there is anything repugnant in the subject or context" and must be read subject to this qualification which limits the general application of the definitions. For the scope of these and similar words, see *Craies on Statute Law*, 3rd Ed., pp. 89 to 101, 153 to 155; *Bonnerjee on Interpretation of Statutes*, Lecture XI, p. 195; *In re Evans* (1891) 1 Q. B. 143.

3. The expression "Act of the Governor General in Council" is not defined but by sections 30 and 30A of this (the General Clauses) Act it includes an Ordinance made under section 72 of the Government of India Act and an Act made by certification under section 67B of that Act. The expression must be read as including an Act of the Indian legislature as constituted under the Government of India Act, *cf.* the last paragraph of s. 130 of that Act.

[...]bet." (1) "Abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code; XLV of 1[...]

This

(General Definitions.—Section 3.)

This definition reproduces the definition given by s. 3 (*1*) of the General Clauses Act, 1887. It incorporates by reference ss. 107 to 117 of the Indian Penal Code.

(*2*) "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions; "Act."

This definition is founded on ss. 32 and 33 of the Indian Penal Code, but covers civil wrongs as well as crimes, as similar considerations apply to both.

2. Its operation may be illustrated from the Indian Penal Code. By s. 299, "whoever causes death by doing *an act* with the intention of causing death * * * commits the offence of culpable homicide." Now if "A intentionally causes Z's death partly by illegally omitting to give Z food, and partly by beating Z, A has committed murder." (See s. 36 *ibid.*, *illustration.*) The "act" by which A causes Z's death consists really of a series of acts, *i.e.*, the blows given in beating him, *plus* a series of illegal omissions, *i.e.*, wrongfully neglecting or refusing to supply him with food at proper times.

(3) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing; "Affidavit."

This definition is taken from s. 2 (*17*) of the General Clauses Act, 1868. Compare the definitions of "oath" and "swear," which are given later on in their alphabetical order.

2. The definition is required because primarily and etymologically "affidavit" signifies a written statement verified by oath. The word itself is a low Latin word which may be translated—"he has stated on faith or oath." Like many old English law terms, the term "affidavit" derives its name from the material word used in the document itself.

3. As to affidavits in civil proceedings, see the Code of Civil Procedure (V of 1908), Order XIX. For criminal proceedings, see the Code of Criminal Procedure, 1898 (V of 1898), s. 539.

[(*3a*) "Assam

"Assam Act" [1][(*3a*) " Assam Act " shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Acts, 1861 to 1909] [2][or the Government of India Act, 1915] [3][or by the local legislature or the Governor of Assam under the Government of India Act] 24 & 25 Vict c 67, 9 Edw 7 c 4, 5 & 6 Geo 5, c 61

"Barrister" (*4*) barrister " shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland

This definition reproduces the definition given by s 2 (*14*) of the General Clauses Act, 1868 It appears to have been taken from s 19 of the Indian High Courts Act, 1861 (24 & 25 Vict , c 104) See now s 101 (*3*) of the Government of India Act

"Bengal Act" [4][(*5*) " Bengal Act " shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under the Indian Councils Act, 1861 or the Indian Councils Acts 1861 and 1892, or the Indian Councils Acts, 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909] [5][or the Government of India Act, 1915] [6][or by the local legislature or the Governor of the presidency of Bengal under the Government of India Act] 24 & 25 Vict c 67, 55 and 56 Vict 14, 9 Edw 7 c 4; 5 & 6, Geo 5, c 61

Without

[1] This clause was inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)
2 and Sch I of the Repealing f 1917)
2 and Sch I of the Repealing 1928)
Sch I of the Repealing and
2 and Sch I of the Repealing and Amending Act 1917 ([illegible] 1917)
[6] These words were added by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

(*General Definitions.—Section 3.*)

Without this definition, the term "Bengal Act" might mean either an Act passed by the Bengal Council or an Act passed by the central legislature but applicable only to Bengal. It thus avoids a tedious periphrasis. *Cf.* definitions Nos. (*6*), (*30*) and (*35*), *post*. Bengal is now a Governor's province.

2. Since the passing of this Act, Legislative Councils have been constituted for the Punjab, United Provinces, Bihar and Orissa, the Central Provinces, Burma, Assam, and Coorg.

[1][(*5a*) "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909] [2][or the Government of India Act, 1915] [3][or by the local legislature or the Governor of Bihar and Orissa under the Government of India Act.] — "Bihar and Orissa Act." (Margin: 25 c. 67. — 7, c. 4 6 Geo. 5, 1)

(*6*) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under [4][the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892, [5][or the Indian Councils Acts, 1861 to 1909] [2][or the Government of India Act, 1915.] [3][or by the local legislature or the Governor of the presidency of Bombay under the Government of India Act:] — "Bombay Act." (Margin: & 25 Vict. 67, 55 & Vict., c. l — w 7, c. 4 & 6 Geo. 5, 6)

See note to No. (5).

(7) "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor — "British India."

[1] This clause was inserted by Sch. I of the Repealing and Amending Act, 1914 (X of 1914).
[2] These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1917 (XXIV of 1917).
[3] These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1928 (XVIII of 1928).
[4] These words were inserted by the Amending Act, 1903 (I of 1903).
[5] These words were inserted by Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

Governor General of India or through any Governor or other officer subordinate to the Governor General of India

This definition is taken from s 18 (*4*) of the Interpretation Act, 1889 (52 & 53 Vict, c 63) See Ilbert's *Government of India*, 3rd Ed, pp 267-273

2 By s 2 (*8*) of the General Clauses Act, 1868, as originally passed, "British India" was defined to mean "the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vict, c 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island Singapore and Malacca" The last twelve words were repealed by the Repealing and Amending Act, 1891 (XII of 1891) The new definition is merely an expansion of the old definition Its legal effect is the same, but it is more intelligible and it avoids a reference to another statute Moreover, as India is ultimately governed by English statutes, it seems right that the definition of "British India" should be the same for both English and Indian Acts

3 For the definition of 'India' see No (*27*), post, p 22, and note that Aden is included in British India (paragraph 6 below) The limits of British India are not always defined by metes and bounds, and the division of sovereignty between the British Government and Indian States sometimes gives rise to difficulty, see for instance, a discussion of the status of the Tributary Mahals of Orissa in *Empress v Keshub Mohajan* (1882), I L R 8 Cal 985, and *Re Bichitranund* (1889), I L R 16 Cal 667 It is now settled that the Mahals are not included in British India, see Act XI of 1893 The words "*for the time being*" are important, for, in the absence of express words extending the application of an enactment to future territory, an enactment applies only to territory covered by the description contained in the enactment at the time when it became law A regards newly acquire[illegible] that particular terr[illegible] (*1*) proclamation, [illegible]ions, (5) orders in [illegible]s *on Statute Law*, [illegible]enry Maine's Minutes, No 81 at p 190)

4 As a general rule British territory can be ceded only by legislation—*Damodhar Gordhan v Deoram Kanji*, known as *The Bhaunagar Case* (1875) L R 3 I A 102 and I L R 1 Bom 367, and the Bhaunagar Act (XX of 1876) But, for the purpose of rectifying boundaries,

boundaries British territory can, perhaps be ceded to an Indian State under the suzerainty of the Queen without legislation—*Lachmi Narain* v *Partab Singh* (1878), I L R 2 All 1, at p 32 See also *Krishnaji Ganesh* v *the Secretary of State* (1918), 21 Bom L R 376 in which it was held that the East India Company had power to cede any territory to an Indian Chief, and the cases of the cession of territory to the *Maharaja* of Benares *Empress* v *Ram Naresh Singh* (1912), I L R 34 All 118 See also Field's Law of Evidence, 7th Ed , p 374, *Abdulla* v *Mohan Gir* (1889) 11 All 490, and Ilbert s *Government of India* 3rd Ed pp 35 36 171 and 234 It should, however, be noted that the exercise of jurisdiction over any territory does not *ipso facto* amount to the exercise of suzerainty nor does it make the territory a part of British India The cession of territory is always a question of fact—*Damodar Gordhan* v *Deoram Kanji* (1876) I L R 1 Bom 367 P C Aden and Perim are parts of British India *Queen Empress* vs *Mangal Teckchand* (1886) I L R 10 Bom 258

5 The expression British India as above defined, includes the land down to low watermark and would ordinarily include the territorial waters of British India though not of course the high seas beyond—*Reg* v *Elmstone* (1870) 7 Bom Cr Ca at p 109 Accordingly the Bombay High Court held in 1871 that the provisions of the Indian Penal Code applied to offences committed within a marine league of the shore of British India—*Reg* v *Kastya Rama* (1871) 8 Bom Cr Ca 63 But the Territorial Waters Jurisdiction Act 1878 (41 & 42 Vict c 73) which applies to the whole of His Majesty s dominions has been framed without reference to the power of the Indian legislature and it seems now that if the offender is not a British subject he must be punished in accordance with English and not Indian Law and the Court by which he is to be tried must be determined by the various and perplexing British and Indian enactments which confer Admiralty jurisdiction Where an offence was committed by a subject of an Indian State on a ship belonging to that State on the high seas beyond territorial limit , it was held that a British Indian Court had no jurisdiction *Emperor* v *Punja Gunu* (1917) I L R 42 Bom 234 For fiscal and protective purposes the Indian legislature has made laws for Indian waters—see *e g* Transport of Salt Act 1879 (XVI of 1879) and the Obstructions in Fairways Act 1881 (XVI of 1881)

6 By section 2 of the Aden Laws Regulation 1891 Aden
(II of 1891) it is enacted that " In this Regulation and

in

in all enactments and rules heretofore or hereafter passed and made by the Governor General in Council or the Governor of Bombay in Council, the word 'Aden' shall, unless there is something repugnant in the subject or context, or the word is used with reference to Her Majesty's Vice-Admiralty Court at Aden, be construed to mean the settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council"

Straits Settlements

7 The Settlement of Prince of Wales' Island, Singapore and Malacca were, in pursuance of the Straits Settlements Act, 1866 (29 & 30 Vict, c 115), s 1, removed from British India and placed under the Colonial Office

"British possession."

(8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall for the purposes of this definition be deemed to be one British possession

This definition is taken from s 18 (2) of the interpretation Act, 1889 (52 & 53 Vict, c 63) British India is a British possession and not a colony, New Zealand is both a British possession and a colony— see definition of "Colony" No (11), *post*, p 13

"Burma Act."

[1][(8a) "Burma Act" shall mean an Act made by the Lieutenant Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892 [2][or the Indian Councils Acts, 1861—1909] [3][or the Government of India Act, 1915] [4][or by the local legislature or the Governor of Burma under the Government of India Act]

24 & 25 Vict. c 67, 55 & 56 Vict c. 14, 9 Edw 7, c 4, 5 & 6 Geo 5, c 61

[(8b) "Central

[1] This clause was inserted by the Amending Act, 1903 (I of 1903)

[2] These words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)

[3] These words were inserted by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

[4] These words were added by s 2 and Sch I of the Repealing and Amending Act, 1928 (XVIII of 1928)

[1][(*8b*) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts, 1861 to 1909] [2][or the Government of India Act, 1915] [3][or by the local legislature or the Governor of the Central Provinces under the Government of India Act] "Central Provinces Act".

Vict 7, 9 Edw 4, 5 & 6 5, c 61

(*9*) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs "Chapter."

This definition reproduces the definition given by s 3 (*2*) of the General Clauses Act 1887 It is supplemented by the definitions of "Part" "schedule," "section" and "sub section" *post* Nos (*38*), (*48*), (*50*) and (*51*)

(*10*) "Collector" shall mean, in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district "Collector"

Compare Bombay Act I of 1904, s 3 (*11*) and United Provinces Act I of 1904, s 4 (*9*) (local General Clauses Acts). In non-regulation provinces Collectors are known as Deputy Commissioners

(*11*) "Colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature all parts under the central legislature shall for the purposes of this definition be deemed to be one colony "Colony"

This definition is taken from s 18 (*3*) of the Interpretation Act 1889 (52 & 53 Vict c 63) Statutes passed

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[1] This clause was inserted by s 2 of the Second Repealing and Amending Act 1914 (XVII of 1914)

[2] These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

[3] These words were added by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

ed in England do not *ipso facto* apply to colonies See *Craies on Statute Law*, 3rd Ed, p 40)

2 The English Act defines the expression "British Islands" to mean the United Kingdom, the Channel Islands and the Isle of Man It was unnecessary to reproduce this definition for Indian purposes The definition must now be read with s 3 of the Irish Free State (Consequential Adaptation of Enactments) Order, 1923

3 The expression "colony" is a geographical and not a political term, and does not imply any form, still less any special form, of government, nor is it precisely co-extensive with the functions of the Colonial Secretary For the status of Cyprus and other territories see Halsbury's *Laws of England* Vol X, s 856, p 503

"Commencement."

(*12*) "commencement," used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force

This definition reproduces the definition given by s 3 (*4*) of the General Clauses Act, 1887 *Cf* s 36 (*1*) of the Interpretation Act 1889 (52 & 53 Vict, c 63)

2 For rules determining when any given Act is to come into force or operation, see s 5, *post*, p 41

"Commissioner"

(*13*) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division

Compare the United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904), section 2 (*11*)

"Consular officer"

(*14*) "consular officer" shall include consul-general, consul, vice consul, consular agent, pro consul and any person for the time being authorized to perform the duties of consul general, consul, vice consul or consular agent

This definition is taken from s 3 of the Consular Salaries and Fees Act 1891 (54 & 55 Vict c 36)

2 For the status of consular officers and consular courts in Eastern States see Hall's *Foreign Jurisdiction of the Crown*

"District Judge."

(*15*) "District Judge" shall mean the Judge of a principal Civil Court of [illegible]

[illegible]

jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction

This definition reproduces the definition given by s 2 *(12)* of the General Clauses Act 1868 Most of the Acts in which the expression occurs have now however, separate definitions of it

2. For the definition of "High Court," see No *(24)* *post*, p 20

(16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter — "Document"

*This definition is taken from s 3 of the Indian Evi*dence Act 1872 (I of 1872) The word "written" was added in Select Committee to incorporate the definition of "writing"—see No *(58)*, *post* p 39 The definition corresponds with that given by s 29 of the Indian Penal Code except that the words "for the purpose of recording that matter" have been substituted for the words "as evidence of that matter"

2 The Indian Evidence Act gives the following illustrations —"A writing is a document Words printed lithographed or photographed are documents A map or plan is a document An inscription on a metal plate or stone is a document A caricature is a document The Indian Penal Code gives also this further illustration —"A writes his name on the back of a bill of exchange payable to his order The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder The endorsement is a document and must be construed in the same manner as if the words pay to the holder or words to that effect had been written over the signature

3 As to documents as evidence in legal proceedings see Field's *Law of Evidence* For a discussion of the term forged instrument see *Reg* v *Riley* (1896) 1 Q B 309 where a forged telegram was held to be a forged instrument under the Forgery Act 1861 (24 & 25 Vict c 98) see also Stroud's *Judicial Dictionary* tit "Document

ed in England do not *ipso facto* apply to colonies. See *Craies on Statute Law*, 3rd Ed., p. 405.

2. The English Act defines the expression "British Islands" to mean the United Kingdom, the Channel Islands and the Isle of Man. It was unnecessary to reproduce this definition for Indian purposes. The definition must now be read with s. 3 of the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

3. The expression "colony" is a geographical and not a political term, and does not imply any form, still less any special form, of government, nor is it precisely co-extensive with the functions of the Colonial Secretary. For the status of Cyprus and other territories see Halsbury's *Laws of England*, Vol. X, s. 856, p. 503.

"Commencement."

(*12*) "commencement," used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

This definition reproduces the definition given by s. 3 (*4*) of the General Clauses Act, 1887. *Cf.* s. 36 (*1*) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

2. For rules determining when any given Act is to come into force or operation, *see* s. *5*, *post*, p. 41.

"Commissioner."

(*13*) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division.

Compare the United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904), section 2 (*11*).

"Consular officer."

(*14*) "consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul or consular agent.

This definition is taken from s. 3 of the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36).

2. For the status of consular officers and consular courts in Eastern States see Hall's *Foreign Jurisdiction of the Crown*.

"District Judge."

(*15*) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction.

(*General Definitions —Section 3*)

1 This definition reproduces the definition given by s 3 (5) of the General Clauses Act, 1887 For the definition of "year," see No *(59) post*, p 39

2 Compare the definition of "financial year" given by s 22 of the Interpretation Act, 1889 (52 & 53 Vict, c 63) For this purpose English and Indian dates correspond

(*20*) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not — Good faith

1 This definition coincides with the definitions given by s 90 of the Bills of Exchange Act 1882 (45 & 46 Vict c 61), and s 62 of the Sale of Goods Act 1893 (56 & 57 *Vict* c 71)

2 The definition departs from the standard laid down by the Indian Penal Code and the Indian Limitation Act By s 52 of that Code (and similarly by s 2 (7) of the Indian Limitation Act 1908) "nothing is said to be done or believed in good faith which is done or believed without due care or attention" In other words for the purposes of the Code a thing which is done negligently is not deemed to be done in good faith It would be inconvenient to apply this artificial standard to cases outside the Code There are many instances in which a man is properly held negligent by this standard, but then it is better to provide expressly that he shall be liable unless he has acted "in good faith *and* without negligence" or "in good faith *and* with due care and attention" In ordinary language good faith is opposed to bad faith and not to negligence English law has long recognized this, for, as Lord Denman said in 1836 "gr[…] negligence may be evidence of *mala fides* but is not the same thing We have shaken off the last remnant of the contrary doctrine"—*Goodman* v *Harvey* (1836) 4 A & E at p 870 *cf Jones* v *Gordon* [1877] L R 2 A C 629 The definition of "good faith" was the subject of discussion in the Legislative Council—see *Gazette of India* 1897 Pt VI pp 56 to 62 and 76 to 79 The definition of good faith given in this Act does not apply expressly to the term as used in the Contract Act The definition in civil law is that a thing is deemed to be done in good faith which is done without due care and caution *i e* care and caution expected of a man of ordinary prudence—*Maung Aung Pa* v *Maung* [illegible] (1911) 12 I C 809

For

For the scope and meaning of the term as defined in this Act, see cases under ss 41 and 51 of the Transfer of Property Act where the term has been used *Moitheensa Rowthan v Apsa Bibi*, (1911) I L R 36 Mad 194 *Hans Raj v Somni* (1922) I L R 44 All 665, *Kanjappa Gounden v Peruma Gounden*, (1909) I L R 32 Mad 530 *Abhoy Churn Ghose v Attarmoni Dassee*, (1908) 13 C W N 931

Fraud

3 The English Courts have always refrained from giving a definition of fraud but the criteria of a fraudulent representation are thus summed up by Lord Herschell in *Derry v Peek* 1889 L R 14 A C 337 at p 374 (an action for damages) — 'Fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without a belief in its truth, or (3) recklessly careless whether it be true or false Although I have treated the second and third as distinct cases I think the third is but one instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states To prevent a false statement being fraudulent there must, I think be an honest belief in its truth And this probably covers the whole ground for one who knowingly alleges that which is false has obviously no such honest belief For the purposes of contract see the definition of fraud given by s 17 of the Indian Contract Act 1872 (IX of 1872)

Negligence

4 For legal purposes, "negligence' may probably be defined as the breach by one person of a legal duty to use care proximately causing damage to another person

Sir F Pollock has pointed out that negligence exactly corresponds with *culpa* in Roman law while *dolus* corresponds with intentional wrong doing—*Law of Torts*, 12th Ed p 16 The duty to use care may arise from contract or may be imposed by law independently of contract the general rule being that every one is bound to exercise due care towards his neighbours in his acts and conduct or rather that if he falls short of this he does so at his own peril If there be no legal duty to use care the law can take no cognizance of negligence, however mischievous may be its results

For the theory and history of negligence in English and American law, see *Holmes on the Common Law*, Chap III

The civil effects of negligence are two fold —(1) The party injured has a substantive cause of action but the defendant may set up the defence that the plaintiff has

been

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been guilty of contributory negligence, (2) a party who complains that another person has committed a negligent breach of duty or contract may, in certain cases, be estopped by his own negligence—see *Smith's Leading Cases*, 12th Ed , pp 317, 321

The following citations illustrate the above definition —" Negligence in law is a breach of duty unintentional, and proximately producing injury to another possessing equal rights "—Smith's *Law of Negligence* p 1 "Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, [illegible]

" The definition is that negligence consists in doing some act which a person of ordinary care and skill would not do under the circumstances "—*Bridges* v *North London Railway* (1874) L R 7 H L at p 213 Speaking of actionable negligence Lord Cairns says " It must be if I might invent an expression founded upon a phrase in the civil law, *incuria dans locum injuriæ* "—*Metropolitan Railway* v *Jackson* [1877], L R 3 A C at p 198 See also Austin's *Jurisprudence*, 4th Ed , p 425 and Innes' *Law of Torts*, pp 25 27

(*21*) " Government " or " the Government " shall include the Local Government as well as the Government of India — "Government"

This definition is new

2 See " Local Government " defined by No (*29*) *post* p 21 By s 1 of the Government of India Act " India shall be governed by and in the name of His Majesty " The Government, therefore is the Government of the Crown and servants of Government are servants of the Crown Compare the definition of " servant of the Queen " given by s 14 of the Indian Penal Code and the definition of " Government " given by s 17 of that Code as supplemented by s 263A (*l*) where a special extension is given to the term for a special purpose

(*22*) " Government of India " shall mean the Governor General in Council or during the absence of the Governor General from his Council the President in Council or the Governor General alone as regards the powers which may be — "Government of India."

lawfully

lawfully exercised by them or him respectively

This definition reproduces the definition given by s 2 (9) of the General Clauses Act, 1868

2 Normally the executive government of India is carried on by the Governor General in Council—Ilbert's *Government of India* 3rd Ed p 202 But provision is made for the unavoidable absence of the Governor General, and there are certain matters in which the Governor General can act alone or in supersession of his Council (ss 42 & 43 of the Government of India Act) By s 1 of the Government of India Act, the territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King Emperor of India For a historical survey of the powers of the Government of India see Ilbert's *Parliamentary Legislation in India*, 1922 Ed

1* * * *

High Court

(24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates

This definition reproduces the definition given by s 2 (11) of the General Clauses Act, 1868 The effect of it is to include in the term High Court the various Judicial Commissioners and the Chief Court of Oudh, as well as the Chartered High Courts

2 The definition could not conveniently be extended to criminal proceedings because of the complicated provisions relating to European British subjects For criminal proceedings see s 4 (j) and s 266 of the Code of Criminal Procedure 1898 (Act V of 1898), and the notes in Henderson's edition

3 For the history and jurisdiction of the Chartered High Courts see Cowell's *Courts and Legislative Authorities in India* 2nd Ed, Chap X ss 101 to 114 of the Government of India Act, and Ilbert's *Government of India* Besides the three old High Courts at Calcutta Bombay and Madras Chartered High Courts have been established at Allahabad Lahore Patna and Rangoon For the charters of these High Courts see General Statutory

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[1] Clause (23) was repealed by the Repealing and Amending Act 1919 (XVIII of 1919)

tory Rules and Orders, Vol I, pp 96 173 published by the Legislative Department of the Government of India

(25) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth **"Immovable property."**

This *definition reproduces the definition given by* s 2 (5) of the General Clauses Act, 1868

2 As a general definition this is clearly the right one, but it is not always applicable Growing crops and timber are for certain purposes treated as movables *e g* for registration purposes see s 2 (9) of the Indian Registration Act, 1908 (XVI of 1908) But for most purposes, until severed they would properly be treated as immovable property

3 For movable property see No (*34*) *post*, p 26 The distinction between movable and immovable property corresponds roughly with the distinction in English law between *personal* and *real property but the latter is* complicated by rules which have survived from feudal times—see Williams *Real Property* 24th Ed p 6, Malby's *Elements of Law* 6th Ed p 79, and Stokes' *Anglo Indian Codes* Vol I p 487 See also the terms immovable and real property compared by the Privy Council in *Maharana Jaswat Sangji* v *Dessai* (1873), L R 1 I A p 34 where it was held that a "tola gira's huq" was immovable property, resembling a freehold interest issuing out of real property in England A *jalkar* is immovable property—*Ramgopal* v *Noor Mahomed* (1892) I L R 20 Cal 446, so is a right of ferry—*Krishna* v *Akilanda* (1889) I L R 13 Mad 54 so is a *hat*—*Surendra Narain Singh* v *Bhai Lal Bhadur* (1895) I L R 22 Cal 752 A suit for maintenance which seeks to have the maintenance made a charge on immovable property is not a suit for "benefits to arise out of land" within the meaning of this definition—*Beer Chunder Manikya* v *Raj Coomar Nobodeep Chunder Deb Burmono* (1883) I L R 9 Cal 535

4 The older Indian Acts used the English terms "real and personal property"—see *e g*, the Indian Will Act 1838 (XXV of 1838) s 1

The following have been held to be "[illegible]" property within the meaning of the section [illegible] engine press fastened to the ground which [illegible] used effectively without being so fastened *Mussi Kuri* [illegible]

v. *Sub Karan Kurmi* (1914) 23 I C 250, *U That v. Tola Ram* (1917), 43 I C 625, a right of way, *Sital Chandra Chowdhary v. Mrs A J Delanney* (1916), 20 C W N 1158, *Bejoy Chandra Nag v. Bunku Behari Mazumder* (1909), 13 C W N 451, rents and profits, *Golam Mohiuddin v. Parbati* (1909), I L R 36 Cal 665, trees, *Sukhnandan v. Manalchand* (1910), 10 I C 473, standing crops, *Kotagiri Venkataramanujam v. Patibanda Basavayya* (1913) 21 I C 213, a right of fishery, *Shibu Haldar v. Gupi Sundari* (1897) I L R 24 Cal 449 *Fadu Jhala v. Gour Mohan Jhala* (1892), I L R 19 Cal 544 *Sitaram v. Petia* (1916) 43 I C 962

"Imprisonment."

(*26*) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code XLV

This definition reproduces the definition given by s *2* (*18*) of the General Clauses Act, 1868

2 By s 53 of the Indian Penal Code "the punishments to which offenders are liable under the provisions of this Code are * * * imprisonment, which is of two descriptions namely (1) rigorous that is with hard labour (2) simple

3 The practical effect of this definition is that when an Act provides that an offence may be punished with imprisonment the Court may, in its discretion make the imprisonment either simple or rigorous Similarly, the imprisonment awardable under s 488 of the Code of Criminal Procedure 1898 (V of 1898) may be either simple or rigorous—*Queen Empress v. Narain* (1887), I L R 9 All 240

India

(*27*) "India" shall mean British India together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India

This definition is taken from s 18 (*1*) of the Interpretation Act 1889 (52 & 53 Vict c 63) See 'British India' defined by No (*7*) *ante* p 9 In the older statutes the term "India" was often used in the narrower sense now given to the term British India—see *e g* s 1 of the Government of India Act 1858 (21 & 22 Vict

22 Vict., c. 106). See too Ilbert's *Government of India* pp. 291-292.

2 The present definition would probably include tribal territory under the suzerainty of His Majesty. For the term "suzerainty" see Holland's *Jurisprudence* 13th Ed. pp. 50, 395. The term "India" does not include French and Portuguese territories which are Foreign States. Hence the use in more modern Acts of the expression "States in India" to denote what were formerly called "Native States."

(*28*) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. — 'Local authority.'

This definition reproduces the definition given by s. 3 (*6*) of the General Clauses Act, 1887. Compare the definition given by s. 3 of the Cattle-trespass Act, 1871 (I of 1871), s. 2 of the Local Authorities Loans Act, 1914 (IX of 1914) and s. 3 (7) of the Indian Telegraph Act, 1885 (XIII of 1885). The expression "Government" is defined by No. (*21*) *ante* p. 19.

(*29*) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner: — 'Local Government.'

This definition reproduces the definition given by s. 2 (*10*) of the General Clauses Act, 1868. Compare the definition in s. 134 of the Government of India Act. For the powers of the Local Government see ss. 45 to 52 of that Act. The word "person" is defined by No. (39) *post* p. 28 and "province" by No. (41) *post* p. 31.

2 *At present there are seventeen Local Governments* in British India, namely, the Governorships of Bengal, Bombay, Madras, the United Provinces, the Punjab, Bihar and Orissa, Assam, Burma and the Central Provinces (*see* s. 46 of the Government of India Act, 1915), and the Chief Commissionerships of the North-West Frontier Province, British Baluchistan, Delhi, Ajmer and

Merwara,

Merwara, Coorg, the Andaman and Nicobar Islands, the Pargana of Manpur, and Panth Piploda.

"Madras Act."

(*30*) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under [1][the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892 [2][or the Indian Councils Acts, 1861 to 1909] [3][or the Government of India Act, 1915] [4][or by the local legislature or the Governor of the Presidency of Madras under the Government of India Act].

24 & 25 c. 67.
24 & 25 c. 67, 5 & 56 Vict., 14, 9 Ed c. 4, 5 & Geo. 5, c

With this definition *cf.* No. (*5*), *ante*, p. 8, for the powers of local legislatures see *post*, pp. 80-81.

"Magistrate."

(*31*) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force.

This definition reproduces the definition given by s. 2 (*13*) of the General Clauses Act, 1868.

2. On the identical words of the repealed definition it was held that the word "include" was enumerative and not exhaustive, and that a Village Munsif in Madras was a Magistrate within the meaning of s. 26 of the Indian Evidence Act, 1872 (I of 1872)—*Empress* v. *Ramanjiyya* (1878), I. L. R. 2 Mad. 5. So also a Magistrate of an Indian State—see *Queen-Empress* v. *Nagla*, I. L. R. 22 Bom. 235; *Queen-Empress* v. *Sundar Singh* (1890), I. L. R. 12 All. 595; *Emperor* v. *Dhanka Amra* (1914), 16 Bom. L. R. 261; *Emperor* v. *Anandrao Phanse* (1925), 27 Bom. L. R., p. 1034. To the like effect, see *Reg.* v. *Hermann* (1879), 4 Q. B. D., at p. 288.

3. S. 3 (2) of the Code of Criminal Procedure, 1898 (V of 1898), explains that the expressions "officer exercising (*or* having) the powers (*or* the full powers) of a Magistrate,"

[1] These words were inserted by s. 3 of the Amending Act, 1903 (I of 1903).
[2] These words were inserted by Sch. I of the Repealing and Amending Act, 1914 (X of 1914).
[3] These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1917 (XXIV of 1917).
[4] These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1928 (XVIII of 1928).

Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," which occur in earlier enactments (e g Act V of 1861), are to be understood as meaning "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," respectively The obsolete expressions "Magistrate of a division of a district," "Magistrate of the district" and "Magistrate of Police" also are defined there

(32) "master", used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship : "Master" (of a ship).

This definition reproduces the definition given by s 3 (8) of the General Clauses Act, 1887 Compare the definitions of "ship" and "vessel" in Nos (51) and (56), *post*, pp 35 and 38

2 By s 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), "master" includes every person (except a pilot) having command or charge of any ship, and "pilot" means any person not belonging to a ship who has the conduct thereof, and "seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed in any capacity on board any ship See Scrutton's *Merchant Shipping Act, 1894*, p. 548.

(33) "month" shall mean a month reckoned according to the British calendar. "Month."

This definition reproduces the definition given by s 2 (4) of the General Clauses Act, 1868 This definition is only for the purposes of the Acts passed by the Indian legislature and is not applicable to contracts—*South British Fire and Marine Insurance Co* v *Brojo Nath Saha* (1909), I. L. R. 36 Cal 516—nor to cases where the context shows a different meaning, e g a period of 30 days—*Vama Dara Deshkar* v. *Murugesa Mudali* (1905), I. L. R 29 Mad 75

2 In Acts of Parliament passed before the end of the year 1850, "month," unless otherwise specially interpreted, means lunar month, but in Acts passed since that date, "month," unless the contrary intention appears, means calendar month—see 13 & 14 Vict, c 21 s 4, reproduced now in s 3 of the Interpretation Act, 1889 (52 & 53 Vict, c. 63) For the meaning of the term in

documents

Merwara Coorg, the Andaman and Nicobar Islands, the Pargana of Manpur, and Panth Piploda

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With this definition cf No (o), *ante*, p 8, for the powers of local legislatures see *post*, pp 80 81

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[2] These words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)

[3] These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

[4] These words were added by s 2 and Sch I of the Repealing and Amending Act, 192[illegible] ([illegible] of 192[illegible])

Magistrate, ' " Subordinate Magistrate, first class " and ' Subordinate Magistrate, second class," which occur in earlier enactments (*e g* Act V of 1861), are to be understood as meaning " Magistrate of the first class," Magistrate of the second class " and " Magistrate of the third class, ' respectively The obsolete expressions ' Magistrate of a division of a district, ' ' Magistrate of the district and ' Magistrate of Police " also are defined there

(*32*) " master ", used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship "Master" (of a ship).

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(*33*) " month " shall mean a month reckoned according to the British calendar: "Month."

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2 In Acts of Parliament passed before the end of the year 1850, " month," unless otherwise specially interpreted, means lunar month, but in Acts passed since that date, " month," unless the contrary intention appears, means calendar month—see 13 & 14 Vict , c 21, s 4, reproduced now in s 3 of the Interpretation Act, 1889 (52 & 53 Vict , c 63) For the meaning of the term in documents

documents other than statutory enactments, see Stroud's *Judicial Dictionary*, tit "month" Compare also *Dadu* v *Balgouda* (1868), 5 Bom H C R (A C J) 39, *Saroda Pershad* v *Pahali* (1884), I L R 10 Cal 913

Moveable property' (*34*) "movable property" shall mean property of every description, except immovable property

This definition reproduces the definition given by s 2 (*6*) of the General Clauses Act, 1868 Compare the definition of 'immovable property" in No (*25*), *ante*, p 21 The term "movable property" in India corresponds roughly with the term "personal property" in England for which see Williams' *Personal Property*, 18th Ed It includes both tangible property and intangible property, such as debts or other "actionable claims' for which see s 130 of the Transfer of Property Act 1882 (IV of 1882)

"Property' 2 It is to be noted that the term "property" is used in different senses, and its meaning must always be determined by the context

First it is used to denote anything capable of being owned in other words the subject matter of ownership Thus we speak of a house or a horse, or a bill of exchange, being the property of A B, meaning that he is the owner of the thing in question It is in this sense that the word is used in this Act and in the Transfer of Property Act, 1882 (IV of 1882)

Secondly, it is used to denote the right of ownership For instance, if a man lends a horse to a friend, the "property' in the horse is said to remain in the lender So, again, by a sale the "*property" in the goods sold is said* to pass from seller to buyer So too, lawyers speak of general and special "property' or rights of ownership Thus by a pledge the pledgee is said to acquire a special "property" *in the thing pledged*, while the general property" remains in the pledger

Thirdly, the term is used to denote anything valuable —"Things which can be turned into money or assessed at a money value, in other words, rights which may be exchanged for the ownership of money' It is in this last sense that the word 'property' seems to be used when a man speaks of all his 'property", or of his real as opposed to his personal, 'property"—Williams' *Real Property*, 24th Ed p 3

3 Using the term "property' in the sense of the objects of ownership, a comprehensive definition of the word

word is given by s 168 of the Bankruptcy Act, 1883 (46 & 47 Vict c 52) namely — *Property* includes money, goods things in action land, and every description of property whether real or personal and whether situate in England or elsewhere also obligations, easements and every description of estate interest and profit, present or future vested or contingent arising out of, or incident to property as above defined

(*35*) "North Western Provinces and Oudh Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh in Council under [1][the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892 — "North Western Provinces and Oudh Act"

25 Vict 7; 55 & Vict, c

With this definition *cf* No (*5*) *ante* p 8, for the powers of local legislatures see *post* pp 80 81

(*36*) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing — "Oath"

This definition reproduces the definition given by s 2 (*17*) of the General Clauses Act, 1868 Compare the definitions of 'affidavit' and 'swear' given in Nos (*3*) and (*53*) and a similar definition given by s 3 of the Interpretation Act, 1889 (52 & 53 Vict, c 63) Where an English statute required "proof made upon oath" Lord Esher said —"I think that admits proof on affidavit, but is not confined to it" —*Osborne* v *Tillman* 56 L J Q B at p 264 decided on s 32 of the Solicitors Act 1843 (6 & 7 Vict c 73) For oaths in India see the Indian Oaths Act 1873 (X of 1873)

(*37*) "offence" shall mean any act or omission made punishable by any law for the time being in force — "Offence"

This definition reproduces the definition given by s 3 (9) of the General Clauses Act 1887 In view of the definition of 'act' *ante* p 7 the words 'or omission' are perhaps superfluous For penal definitions see s 40 of the Indian Penal Code (XLV of 1860)

(*38*) "Part"

[1] These words were inserted by the Amending Act 1903 (I of 1903)

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"Part" (*38*) "Part" shall mean a Part of the Act or Regulation in which the word occurs

This definition reproduces the definition given by s 3 (*2*) of the General Clauses Act, 1887 Compare the definitions of "Chapter," "schedule" "section" and "sub section"

"Person" (*39*) "person" shall include any company or association or body of individuals, whether incorporated or not

This definition reproduces the definition given by s 2 (*3*) of the General Clauses Act, 1868 Compare s 13, *post* p [illegible]0 under which words in the singular number *prima facie* include the plural and *vice versa*

2 The usual English form of the definition is that "person includes a body of persons, corporate or unincorporate—s 19 of the Interpretation Act, 1889 (52 & 53 Vict, c 63) The rule thus stated appears to be declaratory, but it rather strengthens a weak common law presumption As Lord Blackburn says The word 'person' may very well include both a natural person, a human being and an artificial person, a corporation I think that in an Act of Parliament unless there be something to the contrary probably (but that I should not like to pledge myself to) it ought to be held to include both I have really no doubt that in common talk the language of men not speaking technically a 'person' does not include an artificial person that is to say a corporation Nobody in common talk if he were asked who is the richest person in London would answer the London and North Western Railway Company The thing is absurd It is plain that in common conversation and ordinary speech a 'person' would mean a natural person in technical language it may mean an artificial person in which way it is used in any particular Act must depend upon the context and the subject matter"—*Pharmaceutical Society* v *London Supply Association* [1880] 5 A C 857 See also *Toronto Corporation* v *C P R* [1908] A C 54 A company is a person—*Perumal Goundan* v *Thirumalarayapuram* (1917) I L R 41 Mad 624 The Board of Karachi Port Trust was held to be 'person' within the meaning of Bombay Act VI of 1886—*Prag Narain Baragi* v *The Karachi Port Trust* (1910) 10 I C 972 A receiver appointed for a judgment debtor's property is not a person within the meaning of s 73 Transfer of Property Act 1882

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1882—*Mahamed Kasim Sahib* v *Panchapalesa* (1911), I L R 35 Mad 578 A " living person " within the meaning of s 5 of the Transfer of Property Act, 1882, was held to include a ' corporation ' or a ' juristic person ' such as an idol, and a definition has now been inserted to make this more clear Whether the Secretary of State is not a ' person ' within the meaning of Indian Acts—see Legislative Department A Proceedings, December 1873, Nos 5 to 8 See also the English decisions collected in Stroud's *Judicial Dictionary*, tit " Person "

(*40*) " Political Agent " shall include— " Political Agent "

(*a*) the principal officer representing the Government in any territory or place beyond the limits of British India, and

(*b*) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition

This definition is taken from s 3 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879), as amended by s 1 of Act V of 1896, but the words " shall include " have been substituted for the words " means and includes "

The British Trade Agent in Tibet is not a Political Agent within the meaning of the term

(*41*) " Presidency town " shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be "Presidency town"

This definition was taken from s 4 (*h*) of the Code of Criminal Procedure, 1882 (X of 1882) Compare Madras Act I of 1891, s 3 (*25*), (local General Clauses Act)

2 For the Presidency-towns and the history of the jurisdiction of the old Supreme Courts, whic now

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transferred to the High Courts, see the Indian Presidency towns Act 1815 (55 Geo 3, c 84) and Cowell's *Courts and Legislative Authorities in India*, 5th Ed pp 89 to 103

"Privy Council

(42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council

This definition is taken from s 12 (5) of the Interpretation Act 1889 (52 & 53 Vict c 63)

2 For the history and functions of the Privy Council see Anson's *Law and Custom of the Constitution* Pt II and Cowell's *Courts and Legislative Authorities in India* 5th Ed Chap IX

3 The Judicial Committee of the Privy Council is the ultimate Court of Appeal for India It was constituted on its present basis by the Judicial Committee Act 1833 (3 & 4 Will 4, c 41) For the practice and procedure in Privy Council appeals see Macpherson's *Privy Council Practice* In addition to the appellate jurisdiction of the *Privy Council it may be noted that His Majesty may* under s 4 of the Act of 1833 " refer to the said judicial committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit and such committee shall thereupon hear or consider the same and shall advise His Majesty thereon in manner aforesaid"

"Province

(43) "Province" shall mean the territories for the time being administered by any Local Government

This definition was taken from s 4 (*g*) of the Code of Criminal Procedure 1882 (Act X of 1882) For the definition of "Local Government see No (29) *ante* p 23

Public nuisance

(44) "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code XLV of 1860

This definition reproduces the definition given in s 3 (*10*) General Clauses Act 1887

2 By section 268 of the Indian Penal Code (XLV of 1860) "a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury danger or annoyance to the public or to people in general who dwell or occupy property in the

vicinity

vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common (public?) nuisance is not excused on the ground that it causes some convenience or advantage."

3. For the procedure in a case of public nuisance, see Chap. X of the Code of Criminal Procedure, 1898 (V of 1898). See also s. 91, Code of Civil Procedure (V of 1908). The whole law of public nuisance is discussed in Mayne's *Criminal Law of India*, 4th Ed., at pp. 163, 426 to 436.

"Punjab Act."

24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14; 9 Edw. 7, c. 4; 5 & 6 Geo. 5, c. 61.

[1] [(*44a*) "Punjab Act" shall mean an Act made by the Lieutenant Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892] [2] [or the Indian Councils Acts, 1861-1909] [3] [or the Government of India Act, 1915] [4] [or by the local Legislature or the Governor of the Punjab under the Government of India Act.]

"Registered."

(*45*) "registered", used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents.

This definition reproduces the definition given by s. 3 (*11*) of the General Clauses Act, 1887. Compare Madras Act I of 1891, s. 3 (*28*) and Bengal Act I of 1899, s. 3 (*44*) (local General Clauses Acts).

2. The present law in force is the Indian Registration Act, 1908 (XVI of 1908), as amended by subsequent enactments.

"Regulation."

33 Vict., c. 3; 5 & 6 Geo. 5, c. 61.

(*46*) "Regulation" shall mean a Regulation made under the Government of India Act, 1870 [3] [or the Government of India Act, 1915] [4] [or the Government of India Act.]

The

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[1] This clause was inserted by s. 3 of the Amending Act, 1903 (I of 1903).

[2] These words were inserted by Sch. I of the Repealing and Amending Act, 1914 (X of 1914).

[3] These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act, 1917 (XXIV of 1917).

[4] These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1928 (XVIII of 1928).

The object of this definition is to distinguish Regulations made under ss 1 and 2 of the Government of India Act, 1870 (33 & 34 Vict , c 3) corresponding to s 71 of the Government of India Act from—(1) rules made under the powers given by an Act which are some times called regulations" and (2) the old Bengal, Madras and Bombay Regulations made prior to 1834 for which see *post*, pp 71-73

2 The Government of India Act 1870, above referred to, was passed in order to provide a more summary procedure for the making, by the Governor General in (Executive) Council, of laws for the peace and good government of the more backward parts of British India For laws so made see *post* pp 78 79, and Ilbert s *Government of India* 3rd Ed pp 238 239

"Rule" (47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment

This definition is intended to mark off statutory rules from non statutory rules The provisions of ss 20 to 24 *post* pp 58 61 apply to rules as above defined

2 Some English Acts—*e g* the Supreme Court of Judicature Act, 1873 (36 & 37 Vict c 66) s 100—expressly declare that "rules" include "forms" There is no substantial distinction between rules and bye laws Compare the definition in the Rules Publication Act, 1893 (56 & 57 Vict c 66) They are to be construed as part of the Act or statute under which they are made—*Institute of Patent Agents* v *Lockwood* [1894] A C 347 Rules however, must strictly be within the scope of the Act under which they are made It is immaterial that they have the effect of abrogating the provisions of any other Act—*Secretary of State* v *Bhaskar* (1925) 27 Bom L R 973 They have the force of law whether the Act under which they are made contains an express provision to that effect or not The words in the rules have the same meaning as in the Act

"Schedule" (48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs

This definition reproduces the definition given by s 3 (2) of the General Clauses Act 1887 Compare the definitions of "Chapter," "Part" "section" and "sub-section"

2 In

2 In England, where a provision in a schedule was repugnant to a provision in the body of the enactment, the latter was held to prevail—*Maxwell on Statutes*, 6th Ed p 283 A form given in a schedule is regarded rather as an illustration and not as controlling the substantive enactment "A schedule in an Act," says Lord Esher, "is a mere question of drafting The schedule is as much a part of the statute, and is as much an enactment, as any other part"—*Attorney General* v. *Lamplough* (1878), 3 Ex D 214, at p 229 *Craies on Statute Law*, 3rd Ed , pp 200 and 201

(*49*) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874 "Scheduled District"

XIV of 1874

The Indian Statute-book has, from the earliest times, contained "de-regulationizing" enactments, *i e* enactments barring completely or partially, the application in the more backward and less civilized parts of the country of the ordinary law, which was at first contained in the old "Regulations" These enactments took varied and sometimes extremely complicated forms, so that, in course of time, doubts arose and it became occasionally a matter of considerable difficulty to ascertain what laws were, and what were not, in force in the different "de-regulationized" tracts The main object of the Scheduled Districts Act, 1874 (XIV of 1874), was to provide a method of removing these doubts by means of notifications to be issued by the Executive Government The preamble refers to the fact that "various parts of British India had never been brought within, or had from time to time been removed from the operation of the General Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature", that "doubts had arisen in some cases as to which Acts or Regulations were in force in such parts and in other cases as to what were the boundaries of such parts", and that it was "expedient to provide readier means for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein" The Act then proceeds to specify and constitute a number of de-regulationized tracts as "Scheduled Districts" a term declared to include any territories to which the provisions of s 1 of the Government of India Act 1870 (33 & 34 Vict, c 3)—for which see *post*, pp 78 79—may be made applicable, to take power (see s 3) to declare by notification what enactments are, or are not actually in force in any "Scheduled District"; and to provide for

extending

extending by notification (see ss 5 and 5A) to any 'Scheduled District' with or without modifications or restrictions any enactment in force in any part of British India at the date of such extension It also takes powers to appoint officers for the administration of a Scheduled District and to regulate their procedure and the exercise of their powers therein and, further, to settle questions as to the boundaries of any such tract A very large number of declaratory and extending notifications under ss 3 and 5 respectively of the Act have been issued and the powers conferred by those sections on the Executive Government continue to be freely resorted to as occasion arises For an example of such a notification see *post* p 113

Laws Local Extent Act, 1874

2 The Laws Local Extent Act, 1874 (XV of 1874), also contains a definition of the same expression, but it and the Act immediately preceding it in the Statute book must not be confounded The later Act (XV of 1874) removed doubts as to the application of certain enactments to the whole or particular parts of British India other than the territories specified in the sixth schedule as 'Scheduled Districts' for the purposes of that Act, in respect to which no declaration was made When the two Acts (XIV and XV) of 1874 first became law, the lists of Scheduled Districts appended were identical but they have not remained so There have, since 1874 been passed twelve Acts and three Regulations which have amended or partially repealed the list in the Scheduled Districts Act but some only of these have made corresponding alterations in the list annexed to the Laws Local Extent Act, while certain places to which the provisions of s 1 of the Government of India Act 1870 (33 & 34 Vict c 3) have been declared applicable have *ipso facto* become "Scheduled Districts" for the purposes of the Scheduled Districts Act but not within the meaning of the Laws Local Extent Act

"Section"

(*50*) "section" shall mean a section of the Act or Regulation in which the word occurs

This definition reproduces the definition given by s 2 (*15*) of the General Clauses Act, 1868 Compare the definitions of "Chapter" "Part" "schedule" and "sub section"

2 Before 1850 it was usual in England (and India) to preface each distinct portion of an Act by words of enactment and division into sections had no legislative sanction

tion By 13 & 14 Vict , c 21, s 2 it is provided that all Acts shall be divided into sections if there be more enactments than one which sections shall be deemed to be substantive enactments without any introductory words , and by s 8 of the Interpretation Act, 1889 (52 & 53 Vict , c 63), it is provided that ' every section of an Act shall have effect as a substantive enactment without introductory words The provision for division into sections was a mere directory indication to draftsmen There is not any rule as to how many different sentences, each containing a substantive enactment, may be comprised in one section and it is clear that whether an enactment be printed as part of one section or made in another section can make no difference in the construction of the statute —*Craies on Statute Law* 3rd Ed p 194

3 In English and also in Indian legislation it is usual now to distinguish the term clause' from the term section by using the former to denote the paragraph when in a Bill the latter to denote it in an Act But clause is often used for section in decisions on construction —*Ibid* , p 194 "Clause"

4 In Indian Acts clause and sub-clause ' are also invariably used to denote subdivisions of sections and clauses respectively

5 In other documents the term clause" is used to denote a substantive provision Thus as Lord Selborne says a clause in a will is any "collection of words in a will which, when removed out of a will, will leave the rest of the will intelligible ' —*Swinton* v *Bailey* [1878] 4 A C 70 at p 77

(*51*) " ship " shall include every description of vessel used in navigation not exclusively propelled by oars "Ship"

This definition reproduces the definition given by s 3 (7) of the General Clauses Act, 1887 It corresponds with the definition given by s 742 of the Merchant Shipping Act 1894 (57 & 58 Vict c 60), and is supplemented by the definition of "vessel" No (*56*) *post* p 38

2 In nautical language ' ship means a sailing vessel of a particular rig but in legislation the term is used in its popular sense For the English cases discussing the term see Stroud's *Judicial Dictionary*, tit "Ship"

(*52*) " sign " with its grammatical variations and cognate expressions shall, with reference to a person who is unable "Sign"

able to write his name, include "mark", with its grammatical variations and cognate expressions

This definition reproduces the definition given by s 3 (*12*) of the General Clauses Act, 1887 Compare the definition of "writing", No (58), *post* p 39

2 The definition, it is to be noted, merely includes signature by mark, and does not define signature itself

3 A signature may be described as the writing of a person's name with the intention of authenticating a document—*Mathura Das* v *Babu Lal* (1878) I L R 1 All at p 683 *Gangadharrao Venkatesh* v *Shridramapa Balapa* (1893), I L R 18 Bom 586 and *Gur Sahai Ram* v *Sadil Muhammad* (1883), 18 P R 566 A signature is the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed It may appear in any part of the document *Ezekiel & Co* v *Annada Charan Sen* (1922), I L R 50 Cal 180 No general rule can be laid down as to the sufficiency of a signature in any particular case

4 In India it has been held that the writing by a Raja of his title might constitute a sufficient signature to a lease—*Gunee Biswas* v *Sreegopal Choudhry* (1867) 8 W R 395, an [illegible] to sign a criminal process [illegible] *Dedar Bushyo* (1870) [illegible] v *The Queen* (1883) I L R 6 Mad 396 But by s 2 of the Code of Civil Procedure (Act XIV of 1882) [now s 2 (*20*) of the Code of 1908] "signed" included "stamped with the name of the person referred to" and it was held that an initialled warrant was "signed" within the meaning of s 251 of that Code—*Queen Empress* v *Janki Prasad* (1886) I L R 8 All 293 See also *Nirmal Chander Bandopadhya* v *Saratmoni Debya* (1898), I L R 25 Cal, at p 915, where it was held that the affixing of a testator's name by a facsimile stamp was sufficient to meet the requirements of s 50 of the Indian Succession Act, 1865 (X of 1865) On the other hand it has been held that an initialled warrant was not "signed" within the meaning of s 75 of the Code of Criminal Procedure, 1898 (Act V of 1898)—*Abdul Gafur* v *Queen Empress* (1896) I L R 23 Cal 896

5 In England a pencil signature to a bill of exchange has been held sufficient, and it has been suggested that

that a lithographed or stamped signature might be sufficient. A signature made by another person but attested by mark is sufficient. Where a promissory note ran—"I William Smith promise to pay, etc.," instead of "I promise to pay," with the signature appended, it was held sufficiently signed. Where a statute requires a [non commercial] document or contract to be signed, a mere mark, or initials or a stamp, if intended as signatures, are sufficient, and it is immaterial in what part of the document the name is introduced provided it governs the whole—*Chalmers on Bills of Exchange*, 9th Ed., p. 329, and cases there cited. In *Bennett* v. *Brumfitt* (1867), L. R. 3 C. P. 28, Willes, J., remarked that "the using a stamp is only a compendious way of writing the party's name" and in *The Queen* v. *Cowper* (1890), L. R. 24 Q. B. D. at p. 533, Lord Esher, M. R., said —"I know of no case, with the exception of a will, in which, if a man's name is put down by him with the intent that it shall be treated as his signature, that is insufficient because it is not in his handwriting." See further Stroud's *Judicial Dictionary*, tit. 'Signature,' 2nd Ed., and *Jenkyns* v. *Gaisford* (1863), 32 L. J. Pr. 122.

(53) "son", in the case of any one whose personal law permits adoption, shall include an adopted son. "Son"

This definition reproduces the definition given by s. 2 (19) of the General Clauses Act, 1868. Compare the definition of "father" in No. (18), *ante*, p. 16, and the note thereto.

(54) "sub section" shall mean a sub section of the section in which the word occurs. Sub section.

This definition reproduces the definition given by s. 3 (3) of the General Clauses Act, 1887. Compare the definitions of "Chapter," "Part," "schedule" and "section."

(55) "swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. "Swear"

This definition is taken from the definition given by s. 2 (17) of the General Clauses Act, 1868. Compare the definitions of "affidavit" and "oath," *ante*, pp. 7 and 27. For oaths in India see the Indian Oaths Act, 1873 (X of 1873).

[(55a) "United

"United Provinces Act" [1][(*55a*) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts 1861 and 1892] [2][or the Indian Councils Acts 1861 to 1909] [3][or the Government of India Act 1915] [4][or by the local Legislature or the Governor of the United Provinces under the Government of India Act] 24 & 25 Vict c. 67, 55 & 56 Vict c 14 9 Edw 7, c 4, 5 & 6 Geo 5 c 61

"Vessel" (*56*) "vessel" shall include any ship or boat or any other description of vessel used in navigation

This definition is taken from s 742 of the Merchant Shipping Act 1894 (57 & 58 Vict c 60) It supplements the definition of "ship" in No (*51*) *ante*, p 35

2 By s 48 of the Indian Penal Code (XLV of 1860), 'the word 'vessel' denotes any thing made for the conveyance by water of human beings or of property

"Will" (*57*) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property

This definition reproduces the definition given by s 2 (*16*) of the General Clauses Act,1868, except that the word 'disposition' has been substituted for the word "distribution"

2 For the force of the word "include," which is to be construed as enumerative and not as exhaustive see *Empress* v *Ramanjiyya* (1878) I L R 2 Mad 5

3 By s 2 of the Indian Succession Act, 1925, (XXXIX of 1925) "will" means the legal declaration of the intentions of the testator with respect to his property, which he desires

[1] This clause was inserted by s 3 of the Amending Act 1903 (I of 1903)
[2] These words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)
[3] These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)
[4] These words were added by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

desires to be carried into effect after his death, and "codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions It is considered as forming an additional part of the will.

4 In English law "a last will and testament is defined to be the just sentence of our will touching what we would have done after our death and in strictness the definition might perhaps be narrowed by adding respecting personal estate, for a devise of *lands* is considered by our Courts not so much in the nature of a testament as of a conveyance by way of appointment of particular lands to a particular devisee"—*Williams on Executors*, 11th Ed Vol I p 4 but, for wills since 1837, see the Wills Act 1837 (1 Vict, c 26)

(*58*) expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form and "Writing"

This definition is taken from s 20 of the Interpretation Act, 1889 (52 & 53 Vict, c 63) Compare the former definition given by s 3 (*14*) of the General Clauses Act, 1887

2 For English decisions on the term, see Stroud's *Judicial Dictionary*, *tit* "writing"

3 As to finger-impressions, which are for certain purposes placed on the same footing as hand-writing, see ss 45 and 73 of the Indian Evidence Act, 1872 (I of 1872)

(*59*) "year" shall mean a year reckoned according to the British calendar · "Year"

This definition reproduces the definition given by s 2 (*4*) of the General Clauses Act 1868 Compare the definition of the "financial year" in No (*19*), *ante*, p 16

2 See the English cases collected in Stroud's *Judicial Dictionary*, *tit* "year" For the computation of time, see s 10 *post*, p 48

4. (*1*) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", "barrister", "British India", "District Judge", "father", "Government of India", * * * [1], "High Court", "immoveable property", Application of foregoing definitions to previous enactments

[1] The words "'Her Majesty' or 'the Queen'" were repealed by the Repealing and Amending Act, 1919 (XVIII of 1919)

property", "imprisonment", "Local Government", "Magistrate", "month", "moveable property", "oath", "person", "section", "son", "swear", "will" and "year" apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

(2) The definitions in the said section of the following words and expressions, that is to say, "abet", "Chapter", "commencement", "financial year", "local authority", "master", "offence", "Part", "public nuisance", "registered", "schedule", "ship", "sign", "sub section" and "writing", apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This section preserves the effect of the definitions given by the repealed General Clauses Acts of 1868 and 1887 as regards the Acts and Regulations to which they respectively applied, and avoids reference to the repealed definitions

2 By s 10 of the General Clauses Act, 1887 (I of 1887) the definitions given in the General Clauses Act, 1868 (I of 1868), which applied only to Acts, were extended also to Regulations made after its commencement The further definitions contained in the Act of 1887 applied to both Acts and Regulations made after its commencement

3 The General Clauses Act, 1887 (I of 1887), s 3 (*13*), contained the following definition of "value" —

"Value" "'Value,' used with reference to a suit, shall mean the amount or value of the subject-matter of the suit"

This definition was cut out of the Bill in Select Committee, as the term is used in different Acts with different meanings and no general definition would be appropriate

"Admiralty Court" 4 By s 3 of the Colonial Courts of Admiralty (India) Act, 1891 (XVI of 1891), "the expressions 'Court having Admiralty Jurisdiction' and 'Admiralty Court' and the expressions 'Admiralty or Vice Admiralty cause,' and other

(General Definitions.—Section 4. General Rules of Construction.—Section 5.)

other expressions referring to Admiralty or Vice-Admiralty Courts or causes, shall, wherever any such expression occurs in any enactment of the Governor General in Council, or of a Governor in Council or Lieutenant Governor in Council be deemed to include a Colonial Court of Admiralty and a Colonial Court of Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause, respectively."

It was not thought necessary to include this definition in this Act.

General Rules of Construction.

Coming into operation of enactments.

5. (*1*) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor General.

[1][(*2*) Where any Act of the Governor General in Council is reserved, under section 68 of the Government of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified.]

(*3*) Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Sub-sections (*1*) and (*2*) give rules for determining the day on which any given enactment is to come into force.

2. The assent copy of every Act, signed by the Governor General, is kept in the Legislative Department and [illegible] the Act [illegible] (By s. 57 of the [illegible] of 1872) the Courts are [illegible] laws or rules having the force of law. There appears to be no statutory obligation to

[1] This sub-section was substituted by s. 2 and Sch. I of the Repealing and Amending Act, 1917 (XXIV of 1917).

to publish Acts in the official Gazette, but, as a matter of practice, this is always done without delay, and the Gazette copy is *prima facie* evidence of the correctness of the text—see ss 81 and 84 of Act I of 1872 They are re published in convenient form by the Legislative Department

3 Sub section (*3*) is taken from s 36 (*2*) of the Interpretation Act, 1889 (52 & 53 Vict , c 63), and it adopts the principle that, generally, the law takes no cognizance of fractions of a day—*Maxwell on Statutes*, 6th Ed , p 609 Suppose, then an Act provides that it is to come into force on the 1st of January It will become operative as soon as the clock has struck twelve on the night of the 31st December, and it would be immaterial if it could be shown that the Governor General did not give his assent to it till 2 p m on the 1st of January The old English rule was that every Act, not expressing the contrary was deemed to come into operation as from the first day of the session in which it was passed, because by a fiction of law the whole session was considered as one day But this absurdity was abolished in 1793 by the 33 Geo 3 c 13 There is no illegality in giving assent on a Sunday The Sunday Observance Act (29 Car 2 Ch 7) does not apply to India—*Lalcl and Balkissan* v *Kersten* (1890), I L R 15 Bom 338

Trifling errors in an Act assented to (*i e*, clerical errors) were formerly corrected by the necessary *Corrigenda* or *Errata* notifications in the Gazette Such a practice however is irregular and is not now followed Mere printing errors may be corrected by hand

4 For the power to make rules orders and appointments between the passing and commencement of an Act which does not come into force at once see s 22 *post* p 59 (s 37 *of the* Interpretation Act)

5 For the fraction of-a day rule and its exceptions, see *Campbell* v *Strangeways* (1877) L R 3 C P D 105, *Tomlinson* v *Bullock* (1879), 4 Q B D at p 232 and *Re Sleepers Supply Co* (1885) L R 29 Ch D at p 205

Effect of repeal

6 Where this Act or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made then unless

unless a different intention appears, the repeal shall not—

(*a*) revive anything not in force or existing at the time at which the repeal takes effect or

(*b*) affect the previous operation of any enactment *so repealed or anything* duly done or suffered thereunder, or

(*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(*d*) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(*e*) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, *continued or enforced*, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or Regulation had not been passed

This section is taken from s 38 of the Interpretation Act 1889 (52 & 53 Vict c 63) It will not apply when an enactment expressly provides or when it is the intention of the legislature that existing rights should be affected—*Roberts* v *Potts* (1893) 2 Q B 33 and (1894) 1 Q B 213

2 By s 6 of the General Clauses Act 1868 (I *of* 1868) it was provided that " the repeal of any *statute* Act or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred *or any proceeding commenced*, before the repealing Act shall have come into operation "

3 Clause (*a*) applies to any Act law or right It requires very clear and unmistakable language in a subsequent Act to revive or recreate an expired right—*Laurie* v *Renad* (1892) 3 Ch 402 *Gwynne* v *Drewitt* (1894) 2 Ch 616 see also *Craies on Statute Law* 3rd Ed p 292

4 It

4 In *Heston and Isleworth Urban Council* v *Grant* (1897), 2 Ch 306, it was held that notice given under an Act which was subsequently repealed remained in force and that the liability incurred by virtue of that notice could be enforced It is well established that the law as it exists when the action commenced decides the rights of the parties in the suit unless the legislature express a clear intention to vary the relation of litigant parties to each other—*Hetchcock* v *Way* (1837) 6 A & E 943 at p 951, *Moon* v *Durden* (1848), 2 Ex 22, at p 43, *Smithies* v *National Association of Operative Plasterers* (1909), 1 K B 310 at p 319

5 The general rule of the common law is that a statute is not to be construed retrospectively unless in plain words it has been made retrospective To this rule there was the exception of statutes regulating the practice and procedure of the Courts 'No suitor, says Mellish, L J, " has any vested interest in the course of procedure, nor any right to complain if, during the litigation, the procedure is changed, provided of course that no injustice is done " Alterations in the procedure are always retrospective unless there be some good reason against it—*Hajrat Akramnissa* v *Valulnissa* (1894) I L R 18 Bom 429 *Balkrishna* v *Bapu Yesaji* (1894) I L R 19 Bom 204 *Girish Chundra Basu* v *Apurba Krishna Dass* (1894) I L R 21 Cal 940, *Besseswar* v *Jasoda Lal* (1913), I L R 40 Cal 704 A statute dealing with procedure only, unless the contrary is expressed, applies to all actions, whether commenced before or after the passing of the statute This rule applies even if the statute shortens or extends the period of limitation prescribed for the institution of an action—*Rex*, v *Chandra* (1905) 2 K B 335 at pp 338, 339 See *Beale on Legal Interpretation*, p 475 3rd Ed But a new statute of limitation cannot disturb the title already acquired or revive one already extinguished—*Khunni Lal* v *Gobind Krishna* (1911), I L R 33 All 356 (P C), *Mahomed Meh* [illegible]
37 Bom 393, *Gopaldas* v [illegible]
L R 1420, *Indurai* v *Shi* [illegible]
at p 471 It is doubtful [illegible]
ex parte decree is deemed to be a right within the meaning of s 6, *Manohar Lal* v *Sadiqa Begam* (1916), 37 I C 292 A rule of limitation not being a rule of substantive law is not preserved by s 6, *Irayil Kali Amma* v *Pelappakkara* (1910), I L R 34 Mad 292 S 6 applies only where the change in the law is the result of the repeal of an old enactment and does not extend when it

is due

is due to in addition to it—*Jagadanund* v *Amrita Lal* (1895) I L R 22 Cal 767, *Hemandas* v *Challaram* (1910) 13 I C 264 An acknowledgment of liability only extends the period of limitation and does not confer title and is not a thing done under s 6 (*b*)—*Soni Ram* v *Kanhaiya Lal* (1913) I L R 35 All 227 (P C), *Hope Mills Ltd* v *Cowasji Jehangir* (1910) 12 Bom L R 730, *Tirumalai ammal* v *Subramanian* (1916) I L R 40 Mad 1009 A liability incurred under a repealed Act cannot be enforced by means of the procedure laid down by the repealing Act—*Republic of Costa Rica* v *Erlanger* (1873), L R 3 Ch D 62 at p 69 *Heston and Isleworth Urban Council* v *Grant* (1897) L R 2 Ch D 506 *Young* v *Adam* [1898] L R A C 469, and *Maxwell on Statutes*, 6th Ed p 400

6 The Act of 1887 expressly saved proceedings commenced before the repealing Act came into force The Act of 1897 following the English statute of 1889, saves not only rights and obligations accrued before the repeal, but also the procedure to give effect to them

7 In the future if a procedure Act is repealed and a new procedure is substituted, the proper course will be to provide expressly how far the new procedure is to apply to pending proceedings, and to proceedings thereafter to be instituted to give effect to rights and obligations already accrued

8 For the repeal of an Act which modifies or amends a former Act, see *Glaholm* v *Barker* (1865) L R 1 Ch App 223, at p 229, and *cf* the Cantonments Act, 1897 (XV of 1897)

9 This section does not extend to rules made under an Act, for which the common law doctrine above referred to seems to have been usually relied upon, no express saving being declared as regards anything done under superseded statutory rules Rules made under an Act which is repealed are repealed with the repeal of the power under which they are made

10 A mere right existing at the date of a repealing statute to take advantage of the provisions of the statute repealed is not a "right accrued" within the meaning of the saving clause—*Abbot* v *Minister of Lands* [1895] A C 425, *Reynolds* v *Att Genl for Nova Scotia* [1896] A C 240 But see *Hamilton Gell* v *White* (1922) 2 K B 422, in which it was held that the repeal of the Agricultural Holdings

Act

Act does not affect the right to compensation which the tenant may have acquired under the Act See also *Lambton and Hetton Collieries v Secretary for Board of Trade Mines Department* (1922) and (1923) 1 Ch 586 In *Malar Ali v Sarfuddin* (1922), I L R 50 Cal 115, where a right had accrued through an execution sale under the old Code, it was held it should be determined according to the provisions of the old Code The right of appeal is not a mere matter of procedure—*Colonial Sugar Co v Irving* [1905] A C 369 An appeal is included in the term proceedings *Harrosundari Dabi v Bhojohari Das Manji* (1886), I L R 13 Cal 86 The right of a person to apply to higher authorities for sanction is not a mere matter of procedure and is not affected by a later amending statute in the absence of a specific provision—*Ramkrishna Ayyer v Sethai* (1924) I L R 48 Mad 620

Revival of repealed enactments

7. (*1*) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose

(*2*) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

Sub section (*1*) is taken from s 3 (*1*) of the General Clauses Act, 1868 (I of 1868), as amended by s 9 of the General Clauses Act 1887 (I of 1887) Compare s 11 of the Interpretation Act 1889 (52 & 53 Vict, c 63) To revive a repealed statute it is necessary to state an intention to do so—*In re Jewa Nathoo* (1916) I L R 44 Cal 459

2 The English common law rule was that when an Act which repealed another Act was itself repealed, the first Act was thereby revived *ab initio* This rule was abrogated by statute in 18[illegible]0, and the principle laid down by sub section (*1*) is the same as in England—*Deputy Legal Remembrancer v Mayad Ali* (1897) I L R 2[illegible] Cal 333 See also *Glaholm v Barker* (1865) L R 1 Ch App at p 229 and *Hari Mahadaji Savarkar v Balaji Hari Raghunath Khare* (1881) I L R 9 Bom 233

3 Sub-section

3 Sub section (2) saves the effect of the General Clauses Acts 1868 & 1887, on Acts and Regulations passed before the commencement of this Act

[8 (1)] Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals and re enacts with or without modification any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall unless a different intention appears be construed as references to the provision so re enacted — Construction of references to repealed enactments

This section is taken from s 38 (1) of the Interpretation Act 1889 (52 & 53 Vict c 63)

2 It enacts as a general rule a provision which is commonly inserted in Acts (see, for instance s 3 of the Code of Criminal Procedure 1898) but which is sometimes forgotten

Its operation may be illustrated as follows Suppose the Acts amending the Indian Penal Code were consolidated and in the new Code s 188 (disobedience to orders of public servants) became s 200 Then any Act or document which referred to s 188 of the old Code would have to be construed as referring to s 200 of the new Code It is doubtful whether the word instrument in this section applies to notifications Thus if a notification under the Scheduled Districts Act 1874 has been issued extending an Act to a particular area and if that Act is subsequently repealed it is doubtful whether a fresh notification is necessary extending the new Act which takes the place of the old one

[2][(2) Where any Act of Parliament repeals and re enacts, with or without modification any provision of a former enactment, then references in any Act of the Governor General in Council or in any Regulation or instrument to the provision so repealed shall unless a different intention appears be construed as references to the provision so re enacted]

9. (1) In any Act of the Governor General in Council or Regulation made after the commencement — Commencement and termination of time

This section was re-numbered by the Repealing and Amending Act 1919 (XVIII of 1919)

[2] This sub-section was added by the Repealing and Amending Act 1919 (XVIII of 1919)

ment of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"

(*2*) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

This section reproduces the provision of s 3 (*2*) and (*3*) of the General Clauses Act 1868 (I of 1868)

2 Compare the English R S C Or *LXIV*, r 12 — "In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day" See, also *Re Sleepers Supply Co* (1885) L R 29 Ch D 204

3 The rule in England for the construction of non-
Thus, where
elve calendar
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accident which took place on November 24, 1888, that is to say, in computing the time November 24, 1887, was excluded—*South Staffordshire Tramways Company v Sickness and Accident Assurance Association* (1891), 1 Q B 402

Computation of time

10. (*1*) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period the Act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies XV of 1877

(*2*) This

ment of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

This section reproduces the provision of s 3 (2) and (3) of the General Clauses Act, 1868 (I of 1868)

2 Compare the English R S C Or *LXIV*, r 12 — "In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day" See, also *Re Sleepers Supply Co* (1885) L R 29 Ch D 204

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Computation of time 10. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period the Act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies XV of 187

(2) This

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This section is taken from s 7 (1) and (2) of the General Clauses Act 1887 (I of 1887) with a modification of language suggested by s 11 of Madras Act I of 1891, (local General Clauses Act) It is a recognized principle that persons who are prevented from doing anything in Court on a particular day not by any act of their own but by the Court itself are entitled to do it at the first subsequent opportunity—*Samba iia* v *Ramasami* (1898), I L R 22 Mad 179 An act of a Court ought not to prejudice anybody

2 In the Statement of Objects and Reasons to the Act of 1887 it is remarked that "section 7 is taken from the English Municipal Corporation Act 1882, and is much wanted in this country in the cases to which the Indian Limitation Act, 1877, does not apply "

3 In England and Scotland Greenwich mean time, and in Ireland Dublin mean time, is taken to be referred to in statutes—see the Statutes (Definition of Time) Act, 1880 (43 & 44 Vict , c 9) There is no corresponding provision in India

4 Fractions of a day are generally not taken into account—*Ramapati Chatterjee* v *Sachinandan Nandi* (1920), 55 I C 650 "Sunset" is not an expression of time within the meaning of the Statute (Definition of Time) Act, 1880 —*Gordon* v *Cann* (1899) L J R Q B D 434 See also *Harde Narain* v *Alam Singh* (1918), I L R 41 All 47, *Sheidas Daulatram* v *Narayen* (1911), I L R 36 Bom 268, *Hana* v *Vatu* (1910), I L R 35 Bom 35

5 The reference to the Indian Limitation Act 1877 must now, of course under section 9 be read as a reference to the Act of 1908

11. In the measurement of any distance, for the purposes of any Act of the Governor General in Council or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane Measurement of distances.

This section is taken from s 34 of the Interpretation Act 1889 (52 & 53 Vict c 63)

2 The

(*General Rules of Construction —Sections 11-13*)

2 The practical effect of the provision is that distance is, *prima facie*, to be calculated "as the crow flies," and not by the nearest road or other practicable means of access A similar rule has been applied in England to the construction of non statutory documents—*Lake v Butler* (1854), 5 E & B 92 at p 99 Where it is intended that distances should be measured, *e g* by road, this should be expressly stated—*cf* s 74 of the Elementary Education Act 1870 (33 & 34 Vict, c 75)

Duty to be taken *pro rata* in enactments

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise then a like duty is leviable according to the same rate on any greater or less quantity

This section reproduces s 4 of the General Clauses Act 1868 (*I of 1868*) *except that the word* "*enactment*" is substituted for the word "Act" See "enactment" defined by s 3 (*17*) *ante*, p 16

2 For the construction put in England upon the phrase "a penny per ton per mile," see *Pryce v Monmouthshire Canal, etc Co* [1879], 4 A C 216

Gender and number

13. In all Acts of the Governor General in Council and Regulations, unless there is anything repugnant in the subject or context,—

(*1*) words importing the masculine gender shall be taken to include females, and

(*2*) words in the singular shall include the plural, and *vice versâ*

This section is taken from s 2 (*1*) and (*2*) of the General Clauses Act 1868 (I of 1868) but it has been extended to all Acts and Regulations and does not apply merely to those passed after 1868

2 For a discussion of the scope of sub section (*1*) see *Chorlton v Lings* (1868) L R 4 C P 374 where it was held that the word "man" in the Representation of the People Act, 1867 did not include "woman"—*Nairn v St Andrews University* [1909], A C 147 *Beresford-Hope v Lady Sandhurst* (1889) 23 Q B D 79

[1][13A.

(General Rules of Construction —Section 13A)

[1][**13A.** In all Acts of the Governor General in Council and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being] References to the Sovereign

This section has been taken from s 30 of the Interpretation Act (52 & 53 Vict c 63) It is now well established that a legislature is not determined by the demise of the Crown

2 Although the Cr [illegible] cut the Empire its [illegible] power is exercisable b [illegible] lities or for different [illegible] accordance with the common law or the statute law there binding on the Crown—*Williams* v *Howarth* [1905] A C 551, *Dominion of Canada* v *Province of Ontario* [1910], A C 637 By s 1 of the Government of India Act India is to be governed by and in the name of the Crown

3 The older authorities are ably treated in Chitty's *Prerogative of the Crown* See also Stephen's *Commentaries*, 18th Ed , Vol I, Part I, Chap V (Royal Prerogatives) The more important rules are (*1*) that the Crown is not bound by a statute unless expressly or by implication named therein, (*2*) that, apart from an express enactment binding the Crown, time does not run against it and therefore the right cannot be lost by mere non user (*3*) that servants of the Crown hold office during pleasure and therefore have no remedy for wrongful dismissal Crown law has been but little discussed *in Indian Courts but when the point has been raised the* privileges of the Crown have been upheld

4 The question of the power of the legislature to make enactments affecting the prerogatives of the Crown came recently before the House of Lords in 1920 in *De Keyser's Royal Hotel* case—*Attorney Gen* v *De Keyser's Royal Hotel Ltd* [1920] A C 508 It was held that the legislature by appropriate enactment can affect the prerogatives of the Crown It is on this principle that the provisions of the Government of India Act are based which provide that any enactment will not be invalid by reason only of the fact that it affects the prerogative of the Crown—s 84 of the Government of India Act It has been held that the prerogative is not merged in the enactment but that it is curtailed to that extent (see *De Keyser's case* referred to above) It is however,

[1] This section was inserted by the Repealing and Amending Act 1919 (XVIII of 1919)

however, a universal rule that a prerogative and the advantage it affords cannot be taken away except with the consent of the Crown embodied in the statute This rule of interpretation is well established and applies not only to statutes passed by the British Parliament but also *to Acts of Indian legislatures framed with constant reference* to the rules recognized in England—*Ganpat Putaya* v *Collector of Kanara* (1875), I L R 1 Bom 7 at p 9 *per* West J (a case relating to the priority of the Crown over attachment)

5 The following are a few of the prerogative rights of the Crown —

(*i*) The right of the King to provide for the administration of newly acquired territories or scattered areas Ordinances made by the *King in Council under powers conferred by* Act of Parliament (such as the Foreign Jurisdiction Act 1890) stand upon a footing of legislation delegated by Parliament and have the force of law by virtue of the Act of Parliament and not of the prerogative—*Sobhu a* v *Miller* [1926] A C 518 *Rex* v *Earl of Crewe* (1910) 2 K B 576

(*ii*) The Crown has the prerogative power of declaring war making peace annexing and ceding territory, and concluding treaties These Acts cannot be questioned in municipal courts—*The Secretary of State in Council of India* v *Kamachi Boye Sahaba* the *Tanjore case* 13 Moore P C 22, *Sirdar Bhagwan Singh* v *Secretary of State for India in Council*, L R 2 I A 38

(*iii*) The Crown is the executive head of every department and every servant of the Crown holds his office at His Majesty s pleasure and therefore can be dismissed without notice in spite of any contract to the contrary, unless such power is limited by any enactment—see the notes to s 16 of the Act p 56 The Sovereign is regarded also as *parens patriae* and as such, is concerned with the welfare of infants and the helpless and the administration of charities—Halsbury s *Laws of England*

(*iv*) Generally the Crown has priority for debts due to it—*The Secretary of State* v *Bombay Landing Co* (1868) 5 Bom H C R (O C J) 23 *Ripla Prasad* v *Hira Lal* (1912) I L R 34 All 223 (P C) *Piclu Lalliar* v *Secretary*

v *Secretary of State* (1916), I L R 40 Mad 767 But it cannot have priority over secured creditors who in insolvency proceedings have not to prove their debts—*Bank of Upper India* v *Administrator General of Bengal* (1917), I L R 45 Cal 653

(i) Exemption from statutes See notes at p 77

(ii) Crown Grants The Crown, by its grant, has power to create an estate which is unknown to any personal law—*Sheo Singh* v *Raghubans Kunwar* (1905), I L R 27 All 634, (P C) A Crown grant has to be construed strictly against the grantee—*Vaman Janardhan* v *Collector of Thana* (1869), 6 Bom H C R (A C J) 191 The law regarding the construction of Crown grants is now summarized in the Crown Grants Act (XV of 1895) which has retrospective effect I L R 27 All 634

(iii) The general prerogative right to exclude aliens from British territory—*Musgrove* v *Chun Teeong Toy* [1891] A C 272 at p 282, where it was held that an alien had no legal enforceable right by action to enter British territory The Foreigners Act (III of 1864) gives power to Government to expel foreigners and the definition "foreigner" includes the subject of an Indian State—*Emperor* v *Jagadeo* (1925) I L R 49 Bom 804, *Alter Caufman* v *Govt of Bombay* (1894), I L R 18 Bom 636

(iiii) By its prerogative right the Crown has power to proclaim martial law suspending the ordinary law of the country This power can be exercised not only during the time of a war, but also during any emergency such as a rebellion or a grave disturbance—*Mostyn* v *Fabrigas* (1774), 1 Cowp 161, *Ex parte Marais* [1902] A C 109, *Bugga* v *King Emperor* (1920), I L R 1 Lah 326 P C , *Kali Nath Roy* v *King Emperor* (1920) I L R 2 Lah 34 P C But the proclamation of martial law within any area does not affect the operation of the ordinary law outside such area and a person charged with an offence committed within the martial area can be arrested outside the area under the

Code

c

Code of Criminal Procedure Even in the area where martial law has been proclaimed, the ordinary law will not be affected unless it has expressly or by necessary implication been so provided—*In re Kochunni Elaya Nair* (1921), I L R 45 Mad 14

(ix) Escheat This prerogative is well established, but the burden lies on the Crown to prove that there are no other heirs—*Collector of Masulipatam* v *Cavaly Vencata* (1860), 8 M I A 500

6 A person aggrieved by the action of the Crown in India has no remedy by Petition of Right His only remedy is by a suit against the Secretary of State for India in Council, and such a suit is not maintainable when the act complained of is done by the Crown in its Sovereign capacity—Clode's *Petition of Right*, pp 42-44 See also *Frith* v *The Queen* (1872), L R 7, Ex 365 *Nobin Chunder Dey* v *Secretary of State* (1875) I L R 1 Cal 11, *Secretary of State* v *Cockraft* (1914) I L R 39 Mad 351 and also Robertson's *Civil Proceedings* pp 24-30 where all the cases on the point are collected

7 As to the King's title as Emperor of India see the Royal Titles Act, 1876 (39 Vict, c 10) and the Proclamation issued thereunder on the 1st January 1877 (*Gazette of India*, 1877, p 16)

8 For a compendium of the law relating to the royal prerogative, see Halsbury's *Laws of England*, Vol VI

Powers and Functionaries

Powers conferred to be exercisable from time to time

14. (*1*) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any power is conferred [1]* * *, then [2][unless a different intention appears] that power may be exercised from time to time as occasion requires

(*2*) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This

[1] The words ' on the Government ' were omitted by the Repealing and Amending Act, 1919 (XVIII of 1919)

[2] These words were inserted *ibid*

This section reproduces the provision of s 5 of the General Clauses Act, 1887 (I of 1887) See " Government ' defined by s 3 (*21*), *ante*, p 19

2 In the Statement of Objects and Reasons to the Act of 1887 it was said — ' The English rule that a power given to the Crown by statute having been once exercised is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor General in Council and Local Governments Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule

3 The section until amended by Act XVIII of 1919 referred in terms to powers conferred on the Government, whereas s 32 (*1*) of the Interpretation Act, 1889 (52 & 53 Vict , c 63), refers to statutory powers generally In the absence of any express or general provision such as this section now contains, it will probably depend on the nature of a power whether it can be exercised from time to time as can judicial powers or is exhausted by a single exercise See *Craies on Statute Law*, 3rd Ed pp 241 242

4 The section does not apply to a power conferred by a rule made under an Act, and it is doubtful whether it can be applied by analogy

15. Where, by any Act of the Governor General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office

Power to appoint to include power to appoint ex officio

This section is probably declaratory, but, as it was the constant practice to insert this provision in Indian Acts *ex majore cautela* (see, *e g* , s 39 of the Code of Criminal Procedure, 1882), it was clearly convenient to generalize it

2 For the construction put in England on the word " expressly " in a statute, see *Charlton* v *Lings* (1868), L R 4 C P , at p 393, *per* Byles, J

16. Where, by any Act of the Governor General in Council or Regulation, a power to make any appointment is conferred, then unless a different intention appears, the authority having

Power to appoint to include power to or

[f

[1] [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [2] [whether by itself or any other authority] in exercise of that power

The Statement of Objects and Reasons to the Bill says —"A power to appoint should ordinarily include a power to remove the person appointed It is, however not certain that this construction would be universally adopted by the Courts especially in view of the fact that it has been usual in Indian Acts expressly to take both powers The opportunity has therefore, been sought to establish the rule once for all for the future" A servant of the Crown holds office during pleasure and his dismissal even without notice does not give a cause of action against the Crown, whatever may have been the terms upon which he was originally appointed—*Dunn v The Queen* (1896) 1 Q B 116, *Jehangir M Cursetji v Secretary of State* (1902), I L R 27 Bom 189, *Voss v Secretary of State* (1906), I L R 33 Cal 669 If, however, the appointment is made under an Act the provisions of that Act apply—*Shenton v Smith* [1895] A C 229 See also *Dinshaw Javerj v Secretary of State* (1921) 24 Bom L R 210 It is however doubtful whether provisions in Indian
sal of public servants
ers of the Crown to

2 The amendment made by Act XVIII of 1928 was designed to meet cases in which powers of appointment have under centralizing or decentralizing legislation been transferred from one authority to another

Substitution of functionaries

17. (*1*) In any Act of the Governor General in Council or Regulation made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions or that of the officer by whom the functions are commonly executed

(*2*) This

[1] These words were inserted by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)
[2] These words were substituted for the words "by it", ibid

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

This section reproduces the provisions of s 3 (6) of the General Clauses Act, 1868 (I of 1868), which was extended to Regulations as well as to Acts by the General Clauses Act, 1887

18. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations — Successors.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

This section reproduces s 3 (5) of the General Clauses Act, 1868 (I of 1868), which was extended to Regulations by the General Clauses Act 1887

19. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior — Official chiefs and subordinates.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

This section reproduces s 3 (4) of the General Clauses Act, 1868, which was extended to Regulations by the General Clauses Act, 1887.

If a duty is imposed on a Collector, then the provisions of the enactment apply automatically to every person lawfully acting for the Collector.

20. Where,

Provisions as to Orders, Rules, etc, made under Enactments

Construction of orders etc, issued under enactments

20 Where, by any Act of the Governor General in Council or Regulation, a power to issue any [1][notification] order, scheme, rule, form or bye law is conferred then expressions used in the [1][notification] order, scheme, rule, form or bye law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power

This section is taken from s 31 of the Interpretation Act 1889 (52 & 53 Vict c 63) Compare s 10 of Madras Act I of 1891 (local General Clauses Act) The provision is declaratory but it is convenient to have it expressly enacted

Power to make to include power to add to amend, vary or rescind, orders rules or bye laws

21. Where by any Act of the Governor General in Council or Regulation a power to [2][issue notifications] orders rules or bye laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to amend vary or rescind any [1][notifications], orders, rules or bye laws so [3][issued]

This section is no doubt declaratory It is convenient to have the principle enacted once for all as the common practice before 1897 had been to take the power expressly in each case Compare s 32 (3) of the Interpretation Act 1889 (52 & 53 Vict, c 63)

2 Many orders are made by notification *e g*, orders extending an enactment under s 5 of the Scheduled Districts Act 1874 (XIV of 1874) and the question frequently arose whether these would be covered by this section The view taken was that the section as it stood before amendment by Act I of 1903 probably referred only to orders of a legislative character As amended it expressly covers notifications as do similar provisions in

[1] This word was inserted by the Amending Act 1903 (I of 1903)
[2] These words were substituted for the word "make" *ibid*
[3] This word was substituted for the word made", *ibid*

(Provisions as to Orders, Rules, etc., made under Enactments.—Sections 21-23.)

in local General Clauses Acts S 21 of the Bombay Act has been held to be retrospective—*Bhaychand* v *Secretary of State* (1927) I L R 51 Bom 725 (P C)

22. Where by any Act of the Governor General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation then that power may be exercised at any time after the passing of the Act or Regulation, but rules bye laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation

Making of rules or bye laws and issuing of orders between passing and commencement of enactment

This section reproduces s 4 of the General Clauses Act, 1887 (I of 1887) Compare s 37 of the Interpretation Act, 1889 (52 & 53 Vict, c 63)

2 Suppose that an Act is passed on the 1st January but is not to come into operation till the 1st June and that power is taken in it to make rules after "previous publication" (see s 23) This section enables the rules to be framed and "previously published" so as to come into operation contemporaneously with the Act

23. Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely.—

Provisions applicable to making of rules or bye-laws after previous publication

(*1*) the authority having power to make the rules or bye laws shall, before making them, publish a draft of the proposed rules or bye laws for the information of persons likely to be affected thereby,

(*2*) the publication shall be made in such manner as that authority deems to be sufficient,

(*Provisions as to Orders, Rules, etc, made under Enactments —Section 23*)

cient, or, if the condition with respect to previous publication so requires, in such manner as the Governor General in Council or the Local Government prescribes,

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration,

(4) the authority having power to make the rules or bye laws and where the rules or bye laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye laws from any person with respect to the draft before the date so specified,

(5) the publication in the Gazette of a rule or bye law purporting to have been made in exercise of a power to make rules or bye laws after previous publication shall be conclusive proof that the rule or bye law has been duly made

This section reproduces s 6 of the General Clauses Act, 1887 (I of 1887) As to publication *cf* the somewhat different procedure authorized by the Rules Publication Act 1893 (55 & 56 Vict, c 66)

2 It is clear from clause (*4*) that rules which are to be made "after previous publication" by a Local Government with the previous sanction of the Governor General in Council need not be submitted to the Governor General in Council for approval until they have been previously published

3 It is clear that amendments may be made without further publication in rules once published for criticism *Otherwise the process would be indefinite* But, if an amendment suggested after previous publication affects prejudicially any right or interest or extends the opera-

tion

tion of the proposed rules, or makes them more stringent, the spirit of this section would seem to require re publication The decision must, however, depend on the importance of the amendment contemplated It will be observed that the position is made secure by clause (5) of the section

4 Where statutory rules have been made under a power requiring previous publication, amendments to the rules must be published previously to their being made.

5 Publication must be made in the manner required by the Act but there is no objection to supplementing it by publication in local newspapers in addition to the publication in the Government Gazette

24. Where any Act of the Governor General in Council or Regulation is, after the commencement of this Act repealed and re enacted with or without modification, then, unless it is otherwise expressly provided, any [1][appointment, notification], order scheme, rule, form or bye-law, [1][made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re enacted, continue in force, and be deemed to have been [1][made or] issued under the provisions so re enacted unless and until it is superseded by any [1][appointment, notification], order, scheme, rule, form or bye law [1][made or] issued under the provisions so re enacted, [2][and when any Act of the Governor General in Council or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874 or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re enacted in such area or part within the meaning of this section] Continuation of orders, etc, issued under enactments repealed and re enacted

With this section compare s 18 of Madras Act I of 1891 (local General Clauses Act) It generalizes a provision

[1] These words were inserted by the Amending Act, 1903 (I of 1903)

[2] These words were added by the Second Repealing and Amending Act, 1914 (XVII of 1914)

(Provisions as to Orders, Rules, etc , made under Enactments —Section 24 Miscellaneous — Section 25)

provision which hitherto has con tantly been inserted in Indian Acts see *e g* s 2 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879)

2 It has been held that notifications and rules issued under the Petroleum Act (XII of 1886) have been kept alive by this section and that the provisions of the new Petroleum Act (VIII of 1899) which under section 1 *(3)* extend only to such local areas as the Local Government may by notification in the local Official Gazette direct, are in force in any area to which the corresponding provisions of the old Act were extended *Cf Padan Saha v Emperor* (1903), 7 C W N 658 Unregistered agricultural leases for a term not exceeding 5 years re serving a rent less than Rs 50 were exempted by a notification in 1885 Subsequently the Indian Registration Act 1908, was passed *Held* that the notification was still in force under section 24 in spite of the new Registration Act—*Hazari Singh* v *Tirbeni Singh* (1914) 12 A L J 792 28 I C 577

Miscellaneous

Recovery of fines

25 Sections 63 to 70 of the Indian Penal Code XLV of 1860 and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye law, unless the Act, Regulation, rule or bye law contains an express provision to the contrary

This provision is taken from s 5 of the General Clauses Act, 1868 (I of 1868), but its operation is slightly larger than that of the repealed enactment because it is *not confined to Acts passed after 1868*

2 The subject matters dealt with by the incorporated provisions of the Indian Penal Code are—s 63 amount of fine when not expressed, s 64, imprisonment in default of payment, s 65 limit of term of imprisonment s 66 description of imprisonment, s 67, imprisonment when offence punished with fine only, s 68 termination of imprisonment on payment of fine, s 69, payment of pro portional part of fine s 70 time for levy of fine and death of offender For a commentary thereon see Mayne's *Criminal Law of India* 4th Ed , pp 28-32

26. Where

26 Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence

Provision as to offences punishable under two or more enactments

This section reproduces the provisions of s 8 of the General Clauses Act 1887 (I of 1887) except that it is no longer confined to Acts passed after 1887 But this extension is merely declaratory—*Queen* v *Ramachandrappa* (1883) I L R 6 Mad 249 but see *Chandi Persad* v *Abdur Rahman* (1894) I L R 22 Cal 131 *Cf* s 33 of the Interpretation Act 1889 (52 & 53 Vict , c 63) Thus a railway servant punishable under s 101 of the Indian Railways Act 1890, may be proceeded against under the general provisions of s 129 instead, if the latter section suits better the maxim *generalibus specialia derogant* notwithstanding for a special provision does not render a general provision inapplicable unless the two are inconsistent When a special enactment deals with an offence similar to the offence which is dealt with by a general enactment it does not follow that the provisions of the general enactment of the Indian Penal Code are repealed to that extent The conviction in such a case may be under either but not both of those enactments as provided by s 26 *Paryag Rai* v *Arjun Mian* (1894) I L R 22 Cal 139, *Segu Baliah* v *N Ramasamiah*, 42 I C 608 Where one Act constitutes two offences a separate punishment for each offence can be the same
Pat L J
(1917), 3
Pat L J 433

2 The word " offence " is defined by s 3 (37), *ante*, p 27

3 The provisions of the section appear to qualify s 2 of the Indian Penal Code (XLV of 1860), which provides that " every person shall be liable to punishment under this Code *and not otherwise* for every act or omission contrary to the provisions thereof ", but it is to be noted that s 5 of the Code, which contains a saving for ' any special or local law " and certain specified enactments, is in the nature of a proviso to s 2

4 It will be observed that the section provides for the punishment of an act which is an offence (1) under the Indian

Indian Penal Code and also under some special or local law, or (2) under two or more special or local enactments

Meaning of service by post

27. Where any Act of the Governor General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

This section is taken from s 26 of the Interpretation Act 1889 (52 & 53 Vict c 63) with the exception that "registered post" has been substituted for "post"

Citation of enactments

28. (*1*) In any Act of the Governor General in Council or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub section of the enactment in which the provision is contained

(*2*) In this Act and in any Act of the Governor General in Council or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation

This section is taken from s 35 of the Interpretation Act 1889 (52 & 53 Vict , c 63)

2 As an example the Indian Penal Code may for legal purposes, be referred to either by that name or as Act XLV of 1860

3 The

3 The convenient practice of giving short titles to Acts of Parliament was introduced in the middle of the last century At first they were used only occasionally, but now the English practice is to give a short title to every Act and by the Short Titles Act 1896 (59 & 60 Vict c 14) short titles have been conferred on the Acts which did not before possess them For example the 3 & 4 Will 4 c 85 may now be cited as The Government of India Act 1833 Collective titles are also given to various series of Acts relating to the same subject matter thus the nineteen Acts relating to the Bank of England may now be cited collectively as " The Bank of England Acts 1694 to 1892 " For Acts conferring short titles on enactments of the legislature in India see the Repealing and Amending Act, 1897 (V of 1897), s 4 and Schedule III the Indian Short Titles Act 1897 (XIV of 1897) and the Burma Laws Act 1898 (XIII of 1898), s 17 and Schedule IV It may be noted that short titles were conferred on a number of Regulations made under the Government of India Act, 1870 (33 Vict , c 3) by means of an executive order—see Legislative Department's Notification No 13 dated the 11th October, 1875, *Gazette of India*, 1875 Pt I, p 529

4 In the later volumes of the last edition of the *Statutes Revised*, the short titles conferred by the Short Titles Act, 1896, have been actually substituted in the text for the longer titles there given

5 Sub section (2) will for the future avoid the necessity of expressly inserting this provision, as was done, for example, in the headings to the schedules to the Repealing and Amending Act, 1891 (XII of 1891)

29 The provisions of this Act respecting the construction of Acts Regulations rules or bye laws made after the commencement of this Act shall not affect the construction of any Act, Regulation rule or bye law made before the commencement of this Act although the Act Regulation rule or bye law is continued or amended by an Act Regulation, rule or bye law made after the commencement of this Act — *Saving for previous enactments rules and bye laws*

This section is taken from s 40 of the Interpretation Act 1889 (52 & 53 Vict c 63) It merely affirms the general rule that legislation is not to be construed as retrospective in the absence of express provision to that effect

[30 In

Application of Act to Ordinances

[1][30. In this Act the expression 'Act of the Governor General in Council,' wherever it occurs, except in section 5, and the word 'Act' in clauses (9), (12), (38), (48), and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861] [2][or section 72 of the Government of India Act, 1915] 24 & 5 & 6 c 61 — 24 & c 67

Application of Act to Acts made by the Governor General.

[3][30A. In this Act the expression 'Act of the Governor General in Council' wherever it occurs [4][includes an Act of the Indian Legislature and, except in section 5], an act made by the Governor General under section 67B of the Government of India Act]

Construction of references to Local Government of a province

[5][31 In any enactment made by any authority in British India before the date on which section 3 of the Government of India Act, 1919, 9 & 10 c 101 comes into operation and in any rule, order, notification scheme bye law or other document made under or with reference to any such enactment any reference by whatever form of words to an authority authorized by law, at the time the enactment was made, to administer executive Government in any part of British India shall, where a corresponding new authority has been constituted by the Government of India Act, 1919, 9 & 10 c 101 be construed for all purposes, after the above mentioned date as a reference to such new authority]

Compare as regards legislative authorities the last paragraph of s 130 of the Government of India Act and see also s 174 (4) of that Act

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THE SCHEDULE—[*Enactments repealed*]—*Rep by the Amending Act 1903 (I of 1903)*

APPENDIX

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[1] This section was added by s 2 and Sch I of the Second Repealing and Amending Act 1914 (XVII of 1914)

[2] These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

[3] This section was inserted by s 2 and Sch I of the Repealing and Amending Act 1923 (XI of 1923)

[4] These words were substituted for the words except in section 5 shall be deemed to include by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

[5] *This section was inserted by s 2 and Sch I of the Repealing and Amending Act, 1920 (XXXI of 1920)*

APPENDIX I

Note on the Indian Statute book

The Statute book of British India is a very complex one It is composed of ten different classes of enactments, which may be grouped as follows —

	I	Acts of Parliament
English legislation	II	Orders in Council (made by His Majesty in Council) and Statutory Rules
Indian legislation	III	The old Bengal, Madras and Bombay Regulations
	IV	(*a*) Acts of the Governor General in Council, now called the Acts of the Indian legislature
		(*b*) Acts of the Governor General which are certified under s 67B of the Government of India Act
		(*c*) Acts of the Governor of a Governor's province which are certified under s 72E of the Government of India Act
	V	Regulations under s 71 of the Government of India Act
	VI	Ordinances made by the Governor General under s 72 of the Government of India Act
	VII	Acts of local legislatures
Derivative legislation in India	VIII	Statutory rules, etc , made in India under the authority of English legislation
	IX	Statutory rules orders, regulations, bye laws and notifications made under the authority of Indian legislation
	X	Rules, laws and regulations made by the Governor General or Governor General in Council for non regulation provinces prior to 1861, which were confirmed by s 25 of the Indian Councils Act, 1861

I The

Acts of Parliament

1 The Acts of Parliament which apply to India may be divided into three classes—(*a*) Acts which in terms apply to India, (*b*) Acts which in terms or by necessary implication apply to the whole of His Majesty's dominions, and (*c*) Acts which apply only to the Presidency-towns, which for certain limited purposes are regarded as British settlements *

(*a*) But little comment is required on the Acts which in terms apply to India such as for example, the Government of India Act, 1919 (9 & 10 Geo V, c 101), or the Indian High Courts Act, 1861 (24 & 25 Vict, c 104) now repealed Their territorial operation is of course confined to British India, but it may be noted that for certain limited purposes Parliament has occasionally legislated for Indian States under the suzerainty of His Majesty—see, for instance, s 1 of the Slave Trade Act, 1876 (39 & 40 Vict, c 46), and s 15 of the Foreign Jurisdiction Act 1890 (53 & 54 Vict c 37) it has also empowered the Indian legislature to legislate for British subjects outside British India—see *post*, p 75

(*b*) An Act of Parliament, which in terms applies to the whole of His Majesty's dominions necessarily applies to British India as a part of those dominions For instance the provisions of the Territorial Waters Jurisdiction Act 1878 (41 & 42 Vict, c 73), clearly apply to the territorial waters of British India, but a curious question might arise as to how far they apply to the territorial waters of an Indian State Then there may be Acts of Parliament which as a question of construction, operate throughout His Majesty's dominions or bind her subjects everywhere For example, certain of the provisions of the Merchant Shipping Act 1894 (57 & 58 Vict c 60) apply in terms to the whole of His Majesty's dominions while others appear to do so as a matter of construction So again the provisions of the Offences against the Person Act, 1861 (24 & 25 Vict c 100) ss 9 and 10 relating to the trial in England of British subjects for murders and manslaughter committed abroad apply to British subjects everywhere The canon of construction for determining the extra-territorial operation of Acts of Parliament is stated in *Reg* v *Jameson* (1896), 65 L J M C 218 at p 224 The defendant in that case was prosecuted under the Foreign Enlistment Act, 1870 (33 & 34 Vict, c 90), for preparing in Bechuanaland a military expedition against a friendly State Lord Russell, in giving the judgment of the Court says —" It may be said

* As to British settlements, see Anson's *Law and Custom of the Constitution* Pt II 3rd Ed, p 61 and *Mayor of Lyons* v *East India Co* (1836) 1 Moore I A 175

said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are matters of construction upon the statute itself. The object of construction is to arrive at what the legislature meant by the language they have used in the enactment. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, a statute will *primâ facie* be taken to apply only to the United Kingdom Where, as here, it is applicable to His Majesty's dominions, it will be taken to apply to all persons in His Majesty's dominions, including those who owe temporary allegiance—foreigners living in the country during their residence there—and according to its context a statute may be taken to apply to His Majesty's subjects everywhere Another general canon of construction is this, that, if any construction otherwise be possible, an Act is not to be construed as applying to foreigners in respect of acts done by them outside the dominions of the sovereign power enacting. That is a rule based upon international law, by which the sovereign power is bound to respect the exclusive jurisdiction in its own territory of every other sovereign power, and not to attempt to legislate for any portion of that territory "

(*c*) In the Presidency-towns and Rangoon a distinction must be drawn between Acts of Parliament passed before, and Acts of Parliament passed after, the grant of the Charter of 1726

As regards Acts passed after 1726 the position seems clear They have no application to the Presidency-towns, or to any other part of British India, unless in express terms or by necessary implication they apply or extend to British India or the whole of His Majesty's dominions or apply as a personal law to His Majesty's subjects everywhere Such Acts, therefore, come within classes (*a*) and (*b*) mentioned above See *Edwards* v *Ronald* (1830), 1 Knapp P C. 259. In order to decide whether any particular British statute binds the people of India, it is necessary in the first place to ascertain whether, by any express enactment, British law has been introduced into the parts of India in question, and then, if it appears that it has been so introduced, it is further necessary to consider, with regard to any particular enactment, whether it would be possible to enforce it among persons who are not Christians but Muhammadans and Hindus, without intolerable injustice and cruelty. For instance, to apply the law against bigamy to a people among whom polygamy is a recognized institution would be monstrous, and accordingly it has not been so applied—See *Adv.*

General

General v *Surnomoye Dossee* (1863), 9 M I A. 391 See also *Craies on Statute Law*, 3rd Ed , pp 406-407, and the cases there cited

As regards Acts of Parliament passed prior to 1726 the position is very obscure The effect of the Charter was to introduce English law into the Presidency-towns in an indefinite manner and to an indefinite extent It is by no means clear whether it was introduced as a territorial law, or as a personal law applying only to European British subjects, but it is clear that only such statutes were imported as, on judicial interpretation, might be held applicable to the circumstances of India Where any particular statute has come before the courts, they have generally held it to be inapplicable See Ilbert's *Government of India*, 3rd Ed , p 353, where the authorities are collected and the question is discussed at length As the result of the authorities and his own investigations, Mr Stokes in his collection, published in 1881, prints 35 statutes as being actually or possibly applicable to the Presidency-towns and to Rangoon, where the Recorder determines cases in which the parties are not Hindus, Muhammadans or Buddhists in accordance with " the law administered by the High Court at Fort William in the exercise of its ordinary original civil jurisdiction " See the Burma Courts Act, 1872 (VII of 1872), s 7 As regards these 35 statutes, it is to be noted that some of them have, since 1881, been repealed or amended in England, and that several more of them have been repealed or appear to be superseded by subsequent Indian legislation

Finally, it may be noted that certain English statutes subsequent to 1726 have been expressly applied to India by Indian legislation For example, Act XXIV of 1841 applies " to the territories of the East India Company, as far as applicable to the same," the 11 Geo 4 & 1 Will 4, c 46, and the 11 Geo 4 & 1 Will 4, c 65 But in such case a statute so applied is not in force in India *proprio vigore* by reference pli- cation of any other foreign law. It owes its validity in India to the Indian, and not to the English, legislature

Orders in Council, etc.

II Colonies acquired by conquest or cession are subject to the legislative powers of the Crown expressed by Orders in Council —Anson's *Law of the Constitution*, Pt II, p 252), but India is not on the footing of a Crown colony—*Adv General* v *Surnomoye Dossee* (1863), 9 M I A 391, and probably the only Orders in Council now in force in India are Orders made under the authority

rity of Acts of Parliament See *e g* the Orders in Council confirming the Extradition (India) Act 1895 (IX of 1895) published in the *Gazette of India* 1896 Pt I, *p* 87 *and the Order in Council giving an appeal from* Zanzibar to the Bombay High Court Such Orders differ only from other statutory rules in that they are made by His Majesty in Council and not by a subordinate rule making authority

2 Royal Proclamations and Orders in Council made in pursuance of the declaration of war with Germany and her allies applied to British India along with the rest of His Majesty s dominions

3 There are a few rules which were made in England under English statutes but operate in India See *e g* orders issued by the Secretary of State under s 1 of the Government of India Act 1919 (9 & 10 Geo V, c 101) and the English Index to Statutory Rules and Orders tit India See also the non domiciled parties Divorce Rules made under the Colonial Divorce Act

III For a historical resume of legislation in India reference may be made to Sir Courtenay Ilbert s book A brief Historical Survey of Parliamentary Legislation relating to India published in 1922 The earliest extant Indian legislation consists of what are usually referred to as the Regulations of the Bengal Madras and Bombay Codes

Regulations of the Bengal, Madras and Bombay Codes

2 The oldest of these Regulations are those of the Bengal Code which were passed from 1793 to 1834 inclusive and numbered in all 675 but are now reduced to only 89 wholly or partly in force Legislative power was first expressly conferred by Parliament upon the Governor General in Council by the East India Company Act 1772 (13 Geo 3 c 63) commonly known as the Regulating Act and by the East India Company Act 1780 (20 Geo 3 c 56) but the terms of those statutes were so narrow and precise that there can be no doubt that the Regulations passed in pursuance of them often exceeded the authority granted However that may be a large number of Regulations were made prior to 1793 and in that year they were collected and passed by Lord Cornwallis in the shape of a Revised Code and the Regulations contained in it date from that year and have been regarded as superseding and repealing all the Regulations passed before that year See the preambles to Regulations VIII IX X etc of 1793 Four years later the East India Act 1797 (37 Geo 3 c 142) gave parliamentary recognition to the full power to legislate which had in the meantime been assumed

3 A legislature having been thus duly constituted in Bengal, it became necessary to establish similar authorities in the other Presidencies Accordingly, by the Government of India Act, 1800 (39 & 40 Geo 3, c 79), the Governor and Council of Fort St George at Madras were invested, within the territories subject to their Government, with the same legislative power as had previously, by the statute of 1781, been conferred upon the Governor General and Council of Fort William Again, in 1807 the 47 Geo 3, Sess 2, c 68, was passed for *inter alia* "the better government of the settlements of Fort St George and Bombay" It recited the expediency of granting to the two local Governors in Council the same powers of government as were vested in the Governor General and Council of the Presidency of Fort William, and proceeded to empower them to make, frame and issue such rules and regulations for the good order and civil government of the towns of Madras and Bombay and the Company's settlements and factories there, "and to add the necessary sanctions thereto as the Governor General in Council might make for the good order and civil government of Fort William" The Governor in Council at Bombay was at the same time empowered to frame regulations for the provincial Courts and Councils within his territories and provinces "in like manner and subject to all the regulations, provisions and confirmations touching the same as the Governor General and Council at Fort William were, by any Act then in force, authorised and empowered to do for the better administration of justice among the native inhabitants and others being within the Provinces of Bengal, Bihar and Orissa" As these statutes were later than the statute of 1797, it would seem that they conferred on the local Governors legislative powers, not as defined by the statutes of 1773 and 1781, but as recognized and confirmed by the statute of 1797 In this way 251 Regulations of the Madras, and 259 Regulations of the Bombay Code were passed, but of these only 33 and 20, respectively are now wholly or in part in force In Bombay a course, similar to that taken by Lord Cornwallis in Bengal in 1793, was adopted in 1827, when a regulation repealing all the 79 Regulations made up to that time was passed and a Revised Code was compiled

4 By the East India Company Act, 1813 (53 Geo 3, c 155), the legislative powers of the three Councils were extended and subjected to further control "Thus," writes Cowell in his *History and Constitution of the Courts and Legislative Authorities in India*, 5th Ed, at p 67, "from time to time the legislative powers of the Councils were

were developed and in pursuance of these powers they enacted Laws and Regulations till 1834 Down to that date which is the important epoch in the history of Indian legislation there were five bodies of statute law in force in the empire *First* there was the whole body of English statute law existing in 1726 so far as it was applicable which was introduced by the Charter of George I, and which applied at least in the Presidency towns *Secondly* all English Acts subsequent to that date which are expressly extended to any part of India *Thirdly*, the Regulations of the Governor General's Council, which commence with the Revised Code of 1793, containing forty eight Regulations all passed on the same day (which embraced the results of twelve years antecedent legislation) and were continued down to the year 1834 They had force only in the territories within the Presidency of Bengal *Fourthly* the Regulations of the Madras Council which spread over the period of thirty-two years *viz*, from 1802 to 1834, and are in force in the Presidency of Fort St George *Fifthly* the Regulations of the Bombay Code which began with the Revised Code of Mr Mountstuart Elphinstone in 1827, comprising the results of twenty eight years previous legislation, and were also continued till 1834, having force and validity in the Presidency of Fort St David'

5 Many of these Regulations have been extended to other provinces with or without modifications, either by notification under s 5 of the Scheduled Districts Act 1874 (XIV of 1874), or by express enactment

Acts of the Governor General in Council

IV By 1833 the weakness and uncertainty of the system of legislation by Regulations for the three provinces had become apparent (see again, Cowell's *History of the Courts and Legislative Authorities in India*, 5th Ed, p 68 and Ilbert's *Government of India*, 3rd Ed, p 86) The Government of India Act, 1833 (3 & 4 Will 4 c 85) swept away the existing legislative authorities, and placed legislative power in the hands of a single authority namely the Governor General in Council By the Government of India Act 1853 (16 & 17 Vict, c 95) provision was made for the association of Additional Members with the Council for legislative purposes and by the Indian Councils Act, 1861 (24 & 25 Vict c 67) provision was made for the re establishment of local legislatures and the constitution of the Governor General's Legislative Council was developed and regulated It was under this statute, as amended by subsequent statutes that Acts of the Governor General in Council were made till 1915 The proper title of the Legislative Council was "the Governor General in Council

cil at meetings for the purpose of making laws and regulations" The laws made by this body were always called "Acts of the Governor General in Council," while the term "Regulation" is confined to Regulations made under the Act of 1870, for which see *post*, pp 78 79

Extent of powers

2 In 1892 by the Indian Councils Act (55 & 56 Vict, c 14) the size of the Legislative Councils and their functions were enlarged The regulations under which the non official members were to be nominated provided for recommendations, which, in practice, were always adopted, and this introduced the elective principle up to the constitution of the Councils In 1909 by the Indian Councils Act, 1909 (9 Edw VII, c 4), the Councils were further enlarged But the statutes of 1892 and 1909 did not make any difference in the legislative power of the Councils In 1915 by the *Government of India Act*, 1915 (5 & 6 Geo V c 61) all statutes relating to the Government of India were consolidated That Act was further amended in 1916 by 6 & 7 Geo V, c 37, and in 1919 by 9 & 10 Geo V, c 101 Under the latter Acts the Indian Legislature consists of two Chambers —(1) t [illegible] mbly [illegible] to be [illegible] lature unless it has been agreed to by both Chambers, either without amendment or with agreed amendments (see s 63) A law can be enacted without the assent of either Chamber of the legislature —(*a*) when the Governor General certifies the passage of the Bill under s 67B, (*b*) by a regulation under s 71, or (*c*) by an ordinance under s 72

The powers of the Indian legislature are both territorial and extra territorial—see Ilbert's *Government of India* 3rd Ed pp 407-422 Its territorial powers may be summarized as follows —

The Indian legislature has power to make laws for all persons, for all courts and for all places or things, within British India [s 65 (*1*) (*a*) of 9 & 10 Geo V, c 101] *Empress* v *Burah* (1878), L R 5 I A 178, and I L R 4 Cal 172, *Queen* v *Bura Hangseh* (1878), 3 Cal L R 197, and *Alter Caufman* v *Government of Bombay* (1894) I L R 18 Bom [illegible] Case, *Damodar Gordhan* [illegible] 1 Bom 367, and L R [illegible] the Indian Evidence Act, 1872, was held to be inoperative It may be noted that there is a presumption that the laws and regulations of the Governor General in Council are known to Parliament—see *Abdulla* v *Mohan Gir* (1859), I L R 11 All 490

As

As to legislation for territorial waters, see the Transport of Salt Act, 1879 (XVI of 1879), and the Obstruction in Fairways Act, 1881 (XVI of 1881), also the proceedings in Council, *Gazette of India*, 1879, Supplt, p 1224, and *Gazette of India*, 1881, Supplt, p 19, and *ante*, p 11

Its extra-territorial powers may be summarized as follows —

The Indian legislature may make laws —

(*i*) for all subjects of His Majesty and servants of the Crown within all parts of India outside British India

(*ii*) for the government of officers, soldiers, airmen and followers in His Majesty's Indian forces wherever they are serving in so far as they are not subject to the Army Act or the Air Force Act,

(*iii*) for all persons employed or serving in any naval forces raised by the Governor General in Council wherever they are serving, in so far as they are not subject to the Naval Discipline Act,

(*iv*) for all native Indian subjects of His Majesty without and beyond as well as within British India

(See s 65 of the Government of India Act)

There are also various Acts of Parliament enabling the legislatures of British possessions to deal with special subjects which may involve extra territorial legislation, see, for example, the Admiralty Offences (Colonial) Act, 1860 (23 & 24 Vict, c 122), s 1, the Naturalization Act, 1870 (33 & 34 Vict, c 14), s 16, the Extradition Act, 1870 (33 & 34 Vict, c 52) ss 18 and 23, the Slave Trade Act, 1876 (39 & 40 Vict, c 46), s 2 the Fugitive Offenders Act, 1881 (44 & 45 Vict, c 69), s 32, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict, c 27) the Colonial Probates Act, 1892 (55 Vict, c 6), s 1, and the Merchant Shipping Act, 1894 (57 & 58 Vict, c 60), ss 735 and 736

3 Under the proviso to s 65 of the Government of India Act, the Indian legislature has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting—

(*i*) any Act of Parliament passed after 1860 and extending to British India, including the Army Act and Air Force Act,

(*ii*) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom

Kingdom for the government of India; and has no power to repeal or alter any rules made under the Government of India Act [s 129A (1)]

Under sub section (3) of s 131 express power has been given to the Indian legislature to alter certain provisions of that Act which are enumerated in the Fifth Schedule thereto

Before the Government of India Act, 1915, there was a considerable conflict of opinion regarding the powers of the Indian legislature to affect the jurisdiction of High Courts Reference to the following cases will be useful—

Collector of Thana v *Bhaskar* (1884), I L R 8 Bom 264, *Feda Hossein in re* (1876) I L R 1 Cal 431, *Queen* v *Burah*, (1878) L R 5 I A. 178, *Currie, in re* (1896), I L R 21 Bom 405, *Sheonandan* v *King Emperor* (1918), 3 Pat L J 581

This was made clear by s 131 (3) and Sch V of the Government of India Act which enables the Indian legislature to amend s 106 regarding the jurisdiction, powers and authority of High Courts

Further, the Indian legislature has no power to pass any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Northern Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty and dominion of the Crown over any part of British India [Government of India Act s 65 (2)] For the meaning of the words ' unwritten law or constitution whereon may depend ", etc , see *Ameer Khan's case*, 6 Ben L R at pp 477-482 It may be noted that any Act giving power to any Court other than a High Court to sentence European British subjects to death requires the previous sanction of the Secretary of State in Council [s 65 (3) of the Government of India Act]

Under s 67 of the Government of India Act, the Indian legislature cannot, without the sanction of the Governor General, enact any Act affecting—

(a) the public debt or revenues,
(b) the religious rites and usages,
(c) the discipline or maintenance of the military, or air forces,
(d) naval relations of the Government with foreign princes or states,

(e) provincial

(*e*) provincial subjects as defined in s 45 (*4*), unless they are expressly made subject to legislation by the Indian legislature

or any Act repealing or amending—

(*f*) any Act of a local legislature

(*g*) any Act or Ordinance of the Governor General

4 It is a well established rule in England, that the Crown is not bound by a statute unless it is expressly or by necessary implication named therein, on the ground that the legislature make laws for subjects and not for the sovereign The same rule has been adopted in the United States In one case it was sought to make Chelsea Bridge liable for poor rates but as the statutes imposing poor rates did not name the Crown and as the bridge was built by the Commissioners of Works out of public money it was held that the bridge was not rateable—*Reg* v *McCann* (1868) L R 3 Q B 141 677 Power to bind Crown.

As India is now governed by and in the name of His Majesty (s 1 of the Government of India Act) and as the powers of the Indian legislature are wholly derived from Parliament it seems clear that an Indian Act cannot bind the Crown or the executive of the Crown unless Parliament has in terms bestowed on it power to do so The only provision in point appears to be s 84 (*1*) (*i*) of the Government of India Act which provides that no Act of the Indian or a local legislature shall be deemed invalid by reason only that it affects the prerogative of the Crown This provision probably authorises the legislature in India to bind the executive of the Crown (that is the Government) by its Acts The English rule that a statute does not bind the Crown unless it is named in it expressly or by necessary implication has been held applicable in India in some cases See *Government of Bombay* v *Esufali* (1909) I L R 34 Bom 618 at p 629 In *Bell* v *Municipal Commissioners for the City of Madras* (1901) I L R 25 Mad 457 Bhashyam Aiyangar J was of c c

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followed in the majority of decisions—*Secretary of State* v *Mathurabhai* (1889) I L R 14 Bom 213 *Secretary of State* v *Bombay Landing Co* (1868) 5 Bom H C R (O C J) 23 A distinction however may be drawn between acts done by the Government in India in exercise of what are called sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having sovereign

powers

powers delegated to them—see *Nobin Chunder Dey* v. *Secretary of State for India* (1875), I L R 1 Cal 11, and *P & O Co* v *Secretary of State for India*, there cited, also *Secretary of State for India* v *Hari Bhanji* (1882), I L R 5 Mad 273, *Ross* v *Secretary of State* (1913), I L R 37 Mad 55, and 39 Mad 781, *Secretary of State* v *Cockraft* (1914), I L R 39 Mad 351, *Rameshwar Singh* v *Secretary of State* (1911), I L R 39 Cal 1 (P C), and s 65 of the Government of India Act, 1858 (21 & 22 Vict, c 106)

For legislative procedure see the *Rules of Legislative Business* made under ss 67 and 80 (3) of the Government of India Act

Regulations under 33 Vict, c 3

V In 1870, an additional power of legislation was bestowed by parliament on the Indian Government By the Government of India Act, 1870 (33 Vict, c 3), ss 1 and 2, which correspond to s 71 of the Government of India Act the Governor General in (Executive) Council is authorized to make Regulations for the peace and good government of certain territories in British India The object of this statute was to provide a more summary and elastic procedure for making laws for the more backward parts of British India The section empowers the Local Government to propose to the Governor General in Council drafts of Regulations for any territory to which the Secretary of State has declared that section applicable The Governor General in Council is then directed to take the draft into consideration If the policy of the measure is approved the form of the draft is overhauled by the Legislative Department and returned if necessary to the Local Government for re submission When the draft Regulation so proposed, has been approved by the Governor General in Council* and has received the Governor General's assent it is published in the *Gazette of India* and the local official Gazette, and "shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Indian legislature"

2 The statute of *1870* was the result of a despatch from the Government of India to the Secretary of State, dated 10th January, 1868, which was drafted by Sir H S Maine The despatch points out that, when new and wild territory is annexed, it becomes at once an integral part of British India and British Indian law applies to it But a refined and elaborate system of law is wholly unsuitable to such territory and its population To a greater or less extent the people must be left to follow their own customs,

* *Such drafts are regularly brought before a meeting of the* Executive Council

customs, and the introduction of English law must be gradual and tentative "A simpler mode of exercising legislative power than that provided by the Indian Councils Act would seem desirable for the purpose of legalizing such experiments, and, in fact, the legislative machinery which we prefer for these wild territories would differ only from the executive machinery now applied by the Punjab Government in its securing a greater degree of caution and deliberation for all measures that might be adopted towards the chiefs and people" (*Life of Sir Henry Maine* by Grant Duff, p 360, where the despatch is cited at length) See Ilbert's *Government of India*, 3rd Ed p 105

There was considerable divergence of opinion on the question, whether the application of a Regulation is or is not strictly territorial It was generally held that there was no such territorial restriction The British Baluchistan Civil Justice Regulation, 1896 (IX of 1896) therefore, provided that the Chief Court in the Punjab should be the High Court in cases of divorce for British Baluchistan (See also s 15 of the Andaman and Nicobar Islands Regulation, 1874) The Punjab Chief Court questioned the validity of this power To set at rest this divergence of opinion, the provision in sub-section 3 (*a*) was added to s 71 of the Act of 1915 by the Government of India Act, 1916

3 Under the powers conferred by the statute of 1870 a large number of Regulations have been made for the wilder parts of Bengal, Bombay, the North-Western Provinces, the Punjab, and Burma and for Coorg, Ajmere, Assam, the Andaman Islands, British Baluchistan, and Aden

4 It is to be noted that, with the exception of s. 5 (*1*) and (*2*) (commencement of Acts), the provisions of the General Clauses Act, 1897 (X of 1897), apply to Regulations There is no difference in form between a Regulation and an Act, except that in the former case the word "Regulation" is used where in the latter case "Act" would be used.

5. The Regulations applicable to the territories under the various Local Governments are collected in the local Codes published by the Legislative Department of the Government of India or the Local Government

6 For the procedure in making Regulations, see Rule 36 of the Rules of Business under s 40 (*2*) of the Government of India Act. (The rules were originally made under s 8 of the Indian Councils Act, 1861).

VI By s. 72 of the Government of India Act, power is given to the Governor General to make temporary laws in Ordinances.

J) 195, *Collector of Thana* v *Bhaskar Mahadeo* (1884), I L R 8 Bom 264 *Hari* v *Secretary of State* (1903) I L R 27 Bom 424 Certain of the provisions of Bombay Act III of 1888 and of Bengal Act II of 1888 having on this ground been found to be *ultra vires* of the local legislatures they were supplemented or validated by Acts of the Governor General in Council—see Act XII of 1888 the Oudh Courts (Supplementary) Act XXXII of 1925 the Madras Bengal and Bombay Children (Supplementary) Act XXXV of 1925 and the Sind Courts (Supplementary) Act XXXIV of 1926

5 The Secretary of State in a despatch dated 1st December 1862, ruled that every Bill of a local legislature containing penal clauses should be submitted to the Governor General for his *previous* sanction and in a despatch dated 3rd December 1886 he pointed out that when a general Act of the Governor General in Council is amended by a local legislature it is inconvenient to incorporate the new provisions which are intended to have only a local application in the general Act, and that the new provisions would more appropriately be framed as a separate Act of the local legislature to take effect with the sanction of the Governor General and notwithstanding anything contained in the general Act

6 It is to be noted that an Act of a local legislature does not have any validity until the Governor General shall have assented thereto and such assent shall have been signified by him to and published by the Governor or Lieutenant Governor as the case may be See s 81 (3) of the Government of India Act

Statutory Rules etc made under English Acts

VIII In modern times the practice has sprung up of delegating certain powers of legislation to public authorities and local bodies The Act of Parliament deals with the main principles of the measure and then leaves the subordinate details to be dealt with by the more flexible machinery of rules orders regulations or bye laws as they are variously called Power is sometimes given to authorities in India to make rules to carry into effect the provisions of English Acts For example the Governor General in Council has wide rule making powers under the Government of India Act which are however usually subject to the sanction of the Secretary of State in Council

When legislative powers are thus delegated to subordinate authorities the powers must of course be exercised in accordance with the authority given and it is a question for the Courts to determine whether the authority has or has not been exceeded It is a clear rule that no Court can question the validity of an Act of Parliament

but

but the numerous decisions on the exercise of delegated powers of legislation have established certain rules of construction in relation to them The amount of deference paid by the Courts to this class of legislation depends on the character of the authority of the delegated lawgiver, and the intention expressed by or to be implied from the language of the legislature as to the extent of authority or respect to be attached to the instrument in question The Courts exercise a keen supervision over municipal bye laws or bye laws made by trading corporations such as railways under their private Acts, but they are very loth to interfere with rules made by the judges or administrative departments of the State Thus, where a rule made by the Lord Chancellor with the concurrence of the Board of Trade under the Bankruptcy Act 1883 (46 & 47 Vict, c 52) took away the right of appeal to the High Court in cases under £50, both the High Court and the Court of Appeal upheld the validity of the rule, and Lord Esher in his judgment says—' Whenever the objection is taken that a general rule made by such a great judicial officer, with the concurrence of a great officer of State, is *ultra vires*, it will be necessary for the Court, if it has to decide the point to look at the rule with extreme care, and we should be strongly inclined to the view that such high functionaries had not exceeded their authority, though, of course if we thought they had, we should be bound to say so —*Ex parte Forman* (1887), 18 Q B D 393 *Cf Re Stainton* (1887), 19 Q B D 182 But it has been held by the House of Lords that where an Act expressly declares that any rules made under it "*shall have the same effect as if enacted by this Act*" the Courts are debarred from calling the rules in question, for they cannot question the powers of the legislature itself—*Institute of Patent Agents v Lockwood* [1894], A C 347

Statutory Rules, &c., made under Indian legislation

IX The practice of leaving subordinate details of *legislation to be worked out by rules or orders* has been widely adopted in India Apparently the first Act which gave this delegated power was Act XI of 1850, s 3 Now nearly every Act contains a rule making power and the statutory rules, orders, regulations, bye-laws and notifications collected together almost equal in volume the Acts themselves The scope and extent of the authority of these rules depends of course upon the terms of the enactments empowering them to be made which vary greatly but in judging of their validity, Indian Courts would probably be guided by the same considerations that the English Courts have applied to rules and

bye-laws

bye-laws made under English statutes It is to be noted that ss 20 to 24 of the General Clauses Act, 1897 (X of 1897), apply to this class of enactment In certain enactments rules made do not come into force till they are approved by the legislature—*vide* s 8 of the Cotton Transport Act, 1923—or certain enactments require that they should be placed before the local legislature Certain local legislatures have enacted that rules made under certain Acts are liable to be rescinded or modified by the legislature—See Bombay Act XVIII of 1925, s 221 This practice, however is avoided as far as possible

Executive orders made for non regulation provinces prior to 1861

X The territories under the government of the East India Company were divided into Regulation and non-regulation provinces The territories outside the Bengal, Madras and Bombay Presidencies were known as non-regulation provinces because the Regulations made for the old Presidencies did not apply to them It was assumed that they were on the same footing as Crown colonies, and that they were to be governed by the executive power Orders and Regulations were made for them either by the Governor General or by the Governor General in Executive Council Doubts having arisen as to the validity of these orders and regulations, s 25 of the Indian Councils Act, 1861 (24 & 25 Vict c 67), provided that they should not " be deemed invalid only by reason " that they had not been made in accordance with the statutory requirements of ordinary Indian legislation That enactment has been construed as impliedly prohibiting such legislation for the future These orders and regulations have never been collected and probably most, or nearly all, of them which have not been expressly annulled are now obsolete In 1870 Sir FitzJames Stephen, after referring to the ' extraordinary indistinctness ' of this body of legislation, proceeded to give the following illustration —" It was ordered on the conquest of some of the provinces—the Punjab for instance—that the *spirit* of the Bengal Regulations should be applied to them, and various orders have been issued at different times, and with respect to different provinces, extending the provisions of particular Regulations and Acts in a more or less indefinite manner to those provinces The Circular Orders too, which have the force of law, were in many instances, not drawn up by lawyers or with any reference to legal principles, but were intended to meet the exigencies of that state of discretionary government which is now passing, if it has not passed away When such orders come before Courts of law, and are interpreted strictly, the results are often lamentable " As to express repeal, see, *e g* , Schedule I to the Punjab Laws Act, 1872 (IV of 1872)

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The origin and scope of the various classes of enactment which, in combination, may be said to form the *lex scripta* of India, having been traced, it may be useful to note how far that body of statutory enactments has been collected in any form which is accessible to the public who are governed by it Sir FitzJames Stephen, in a minute of the 10th February, 1870, after commenting on the defects which are common to all Statute-books, observes that 'the Indian Statute book has one *which is peculiar to itself* If it were not a contradiction to say so, I should describe this fault as consisting in the fact that it does not exist I mean by this that the written law of India is nowhere collected into one body but is to be found in a greater number of repositories than the written law of almost any other country " Since 1870 much has been done, and the Indian statute-book is now hardly open to that reproach

Publication of Statute law.

(1) The Acts of Parliament concerning India up to the year 1881 were first collected and published in Whitley Stokes' *Collection of Statutes relating to India* This compilation is now maintained and brought up to date from time to time by the Legislative Department of the Government of India

(2) The Orders in Council relating to India have not been collected, but references to them may be found under the heading "India" in the *Index to Statutory Rules and Orders* published by the Statute Law Committee in England, and also in Part I of the *List of General Statutory Rules and Orders*, a new edition of which has lately been published by the Legislative Department

(3) The Acts of the Governor General in Council from 1834 onwards are published in annual volumes, and a revised edition of the unrepealed general Acts from 1834 to 1927 has just been published by the Legislative Department

(4) Local Codes used to be published by the Legislative Department for the provinces under the Indian Government but the preparation of these Codes in provinces which have local legislatures now devolves on the Local Governments These Codes contain (*a*) the old Regulations so far as they are in force in the province in question, (*b*) local Acts of the Governor General in Council and Indian legislature (*c*) Regulations under 33 Vict, c 3 and s 71 of the Government of India Act applying to the province in question, and (*d*) Acts of the local legislature, if any The dates of the latest editions of these local Codes are Madras (1915) Punjab (1928), Burma (1924), Bengal (1913-1915), Baluchistan (1914), Central Provinces

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Central Provinces (1924) United Provinces (1922), Ajmere (1916) Coorg (1908) Bombay (1923), Assam (1915)

(5) The collections of Statutory Rules and Orders for the General Statutes have been published by the Government of India while the Local Governments have also published their collections so far as they relate to their provinces

(6) The Chronological Table of enactments relating to India was last published in 1917 but a new edition of this volume is *now in the press and will shortly* be published The Index to the Indian Statutes is in course of preparation by the Legislative Department

Legislation for State territory

Side by side with the British Indian Statute book there exists a large body of laws for State territory closely following British Indian legislation but owing its authority to a wholly different source The Governor General in Council, under powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902 makes laws for Assigned Districts British cantonments Residency bazars railway lands and other ceded jurisdictions in the territories of Indian States The laws so made do not owe their validity either to the English or to the Indian legislature but derive their authority from the delegated prerogative of the British Crown which is the suzerain and paramount power in India For instance the provisions of many Indian Acts have been *applied* to the Civil and Military Station of Bangalore which is in the Mysore State But those Acts are not in force in Bangalore as Acts of the Indian legislature It would have been equally competent to the Governor General in Council to have applied the corresponding provisions of the French or German Codes The laws so made by the executive of the Crown may be compared to the ordinances made by the Governors of Crown Colonies and they may also be compared to the Orders made by His Majesty in Council for establishing consular courts in Eastern States or for regulating African Protectorates *But neither parallel is quite exact for there* is nothing elsewhere which exactly corresponds with the divided sovereignty which exists in Indian States See Ilbert's *Government of India* Chap V

These laws and the rules and orders made under them have been collected in Macpherson's *Lists of British Enactments in force in Indian States* of which a revised edition will be issued shortly

APPENDIX II.

APPENDIX II

Note on Statutory Drafting

General Clauses Act.

The General Clauses Act, 1897, like its predecessors of 1868 and 1887 may be described as a Draftsman's Act Its objects are (1) to shorten the language of statutory enactments (2) to provide as far as possible for uniformity of expression by giving *primâ facie* definitions of a series of terms in common use, (3) to state explicitly certain convenient rules of construction, and (4) to guard against slips and oversights by importing by implication into every Act certain common form clauses which otherwise ought to be inserted expressly and which are apt sometimes to be overlooked

The General Clauses Act does not apply to the Acts of local legislatures Each local legislature requires its own General Clauses Act but it is evident that the local Acts should conform to the general Act, for otherwise divergent rules of construction would apply and great confusion might result Section 5 (*1*) and (*2*) (the coming into operation of enactments) would not be applicable to the Acts of a local legislature but nearly all the remaining provisions are as appropriate for such Acts as for Acts of the Governor General in Council and have in fact been adopted in the local Acts

Statutory drafting

2 Statutory drafting is concerned only with the form of legislation and not with its substance or expediency Its main object is to express clearly and unequivocally the intentions of the legislature, so that rights and obligations may be certain and that the laws which govern them may be "understanded of the people" But, to effect this object it is not sufficient to use language which in a despatch or resolution would properly be described as accurate and precise The construction of Acts and other statutory enactments is confided to the courts of law In process of time the courts have evolved a large and elaborate body of rules to guide them in construing statute law Every enactment must be framed with constant attention to these rules for if it be not so framed it may wholly miss its mark So too many terms and expressions have a technical meaning in law, which is quite distinct from their popular meaning, for example the word "heir" in English law refers only to the inheritor of real property and the word "ship" has a nautical, a popular, and a legislative meaning (see *ante* p 35) Then again the experience of generations of draftsmen has worked out a series of rules which must be observed in order to give uniformity to legislation,

legislation, and which enables those who are concerned with its construction to see at a glance the scheme and scope of any particular piece of legislation Every Act must so to speak be fitted into a general framework

Rules of drafting

3 The following notes relating to the drafting of Indian Acts are adapted, by permission, from a memorandum on "Statutory Forms" drawn up by Sir C Ilbert, Parliamentary Counsel to the Treasury * English rules of drafting are not applicable to India in their entirety because many of them depend on the relations of the House of Commons to the House of Lords and the Crown, and on the Standing Orders of the two Houses Thus the special rules relating to consolidation Bills and money Bills in parliament have no application to India Probably the most convenient course will be to deal first with some preliminary matters and then to take the framework of an Indian Act as the type of legislation and to note consecutively on its component parts

It will be observed that many of the rules noted below are not hard and fast rules but only general principles to be departed from with caution The forms too are not to be followed blindly, but their applicability to each case must be considered

Preliminary work

4 Before beginning to draft a Bill it is essential to master the subject matter When a doubtful question of construction arises, the courts are entitled to consider the previous law and practice, the mischief or defects which the Act was intended to remove, and the nature of the remedy provided, and the courts moreover proceed on the assumption that the legislature when legislating, knows the existing state of the law So before devising a remedy, it is necessary to know the existing law and practice and to have a clear conception of the mischief or defects to be remedied

The following points should be considered with respect to each proposed enactment Is legislation neces sary or can the matter be conveniently dealt with by executive orders? If legislation is required should it be carried out by the central legislature or by local legis lation? Finally, if an Act is resolved on should the Act deal with the whole question, or should details be left to be dealt with by the more flexible machinery of statutory rules?

Arrangement

5 The subject-matter of a Bill should be arranged with reference to administrative convenience Normal and

* Government Bills in England are drafted by or under the directions of the Parliamentary Counsel to the Treasury No provision is made for drafting Bills introduced by private members As regards English drafting see Lord Thring's *Practical Legislation*

and general provisions should come first; special, exceptional or local provisions should be placed at the end. Thus a Bill applying to the whole of British India should be framed accordingly, and any necessary adaptation to the Presidency-towns should, as a rule, be dealt with in special clauses near the end. So too, it is convenient to put temporary and transitional provisions at the end, because, when they are spent, they can be repealed without making gaps in the fabric of the Act.

It is generally expedient to lay down first the rules of law to be observed, and then to state the authorities by which they are to be administered, and the procedure to be followed in administering them.

6. When a Bill is a long one, it may be made more easily intelligible by dividing it into Parts (see *ante*, p. 28), and by grouping clauses under italic headings, as to which see *Queen* v. *Local Government Board* (1882), L. R. 10 Q. B. D., at p. 321, *Hammersmith, etc. Railway Co.* v. *Brand* (1869), L. R. 4 H. L., at pp. 216-217, and *Union Steamship Company of New Zealand* v. *Melbourne Harbour Trust Commissioners* [1884] 9 A. C., at p. 369. But excessive sub-division is to be avoided. It has been said that a Bill should not be divided into Parts unless the subjects of the Parts are so distinct that they might appropriately be contained in separate Acts. Division into Parts.

7. When a Bill is of any length, a tabular "Arrangement of clauses" as it is called in England, or "Contents" as it is called in India, may be prefixed to the Bill. This is rarely done in Bills drafted by the Government of India, but such tables are prepared and prefixed to Acts when republished in the official editions which are issued for sale to the public. The study of such a table is useful for testing the convenience and logical sequence of the arrangement adopted. It may be noted that the sub-divisions of a Bill are called "clauses." When the Bill is passed and becomes an Act, its clauses become sections. In the Bill itself they are always referred to as sections, because the Bill is drafted on the assumption that it will become law, see *ante*, p. 35. Arrangement of sections.

8. Each section should have a marginal note, which should be short and distinctive. It should be general, and should describe, but not attempt to summarize, the contents of the section to which it relates. It should usually be in the substantival form. For instance, it should run—"Power of Local Government to make rules," and not "The Local Government may make rules." When a clause is amended in Select Committee, care should Marginal notes.

should always be taken to see if any corresponding alteration is required in the marginal note Formerly in England marginal notes were added after Bills were passed into law, but now they appear on the rolls of Parliament, and Maxwell thinks—see *Interpretation of Statutes*, 6th Ed, p 76—that it is still doubtful whether they are in these circumstances to be taken as part of the statute or not The better view seems to be that such a note is not an integral part of the Act, but that, when the construction is doubtful, it may be referred to as a contemporaneous exposition of the meaning In the latest edition of the *Statutes Revised* the editors have clearly taken this view, for they have dealt very freely with the marginal notes, which have been considerably altered and abridged In India there has been a similar change in practice, Act XV of 1854 having been the first Act introduced into Council and passed, as is done nowadays *with* marginal notes In *Punardeo Narain Singh* v *Ram Sarup Roy* (1898), I L R 25 Cal 858, it was held that marginal notes are not part of the Act to which they are added

Sections

9 The marginal note may be used to test the question whether a given subject should be dealt with in one or more sections If the marginal note cannot be made short without being vague or distinctive without being long the presumption is that the proposed section should be cut up into two or more sections If a section is long and complex, it should be divided into sub sections As to "section," see further note *ante*, p 34 Provisos may be used to qualify or create an exception to a general rule or statement, but should not be used to state a general rule

Provisos

Sentences

10 Each sentence should be as short and simple as possible The rules to be laid down may be either general or particular, and either absolute or qualified

When a rule is to apply only to a particular case or set of circumstances, it is usually convenient to state the case or set of circumstances first, and to let the rule follow But when the rule is to apply to several cases or sets of circumstances, it is often convenient to state the rule first and enumerate the cases or sets of circumstances afterwards Sections 319 and 320 of the Indian Penal Code illustrate these propositions Section 319 states the case first and the rule afterwards, thus—"Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt" Section 320 has to deal with eight cases which may constitute grievous hurt It therefore states the rule first and the eight cases afterwards thus—"The following kinds of hurt only

only are designated as grievous—first," and then follow the eight cases.

Where a rule is to be subject to qualifications, restrictions or exceptions, these should follow the statement of the rule. But it is sometimes convenient to prefix to the rule words shewing that it is to be so qualified, for instance such words as—"*Subject to the exceptions hereinafter mentioned*" or "*Subject to the provisions of section***," or, as the case may be.

Where possible, the enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion. To take an obvious illustration, the term "person" *primâ facie* includes bodies corporate as well as natural persons (see *ante* p. 28). It is preferable to use the term "person" rather than to attempt to enumerate what it includes by saying "man, woman, child, partnership, company, association, society, corporation," etc. The draftsman must always bear in mind the pitfalls which underlie the two maxims of construction "*Noscitur a sociis*" and "*Expressio unius est exclusio alterius*"—see *Maxwell on Statutes* 6th Ed., p. 547 and *In re Stockport Ragged Industrial and Reformatory Schools* (1899), L. J. 68 Ch. D. Part I, p. 41. So too, where there is an enumeration of several persons or things, followed by an enactment intended to apply to all and each of them, care must be taken to make the enactment apply both generally and distributively. For instance, "A, B, C and D, or any one or more of them, may* *"

11. The language of a Bill should be precise,* but, where ordinary language is unambiguous, technical language should be avoided. No more words should be used than are necessary to make the meaning clear. Every superfluous word may raise a discussion in court. So too the same word should always be used to express the same thing. Nouns should be used in preference to pronouns, even at the cost of repetition. Anything like elegance of style must always give way to precision of meaning. The use of synonyms cannot be justified in drafting, although no great weight is to be attached to a change of language—see Maxwell's *Interpretation of Statutes*, 6th Ed., p. 566. Conversely, the same word must not be used with different meanings. If, in a particular place, it is necessary to use a term in a different sense from that which it bears in the rest of the Act, a special Language

* *E.g.* sentences such as the following should be avoided,—"Ammunition shall only be sold by a licensed dealer hermetically sealed in an iron box."

special definition should be added to the clause in question (see, *e g*, the *Explanation* to s 203 of the Indian Penal Code)

An Act is intended to confer rights and create duties, and it should specify clearly on whom the rights are conferred and the duties imposed A latent ambiguity may often be avoided by using the active instead of the passive form of the verb, *e g*, by saying that a particular person "may do" a particular thing, instead of saying that a particular thing "may be done"

"Shall" and "May"

The use of the future conditional ("if he shall") should be avoided, the use of the word "shall" should be confined to the imperative, and the indicative should follow "if" in drafting Forward references should, if possible be avoided

The word "shall" is the ordinary form of the legislative imperative and is equivalent to "must"* The use of the word "may", in conferring a power, has given rise to much difficulty It has been held in many cases that the person on whom the power is conferred is bound to exercise it, and hence it has been said that "may" really means "must" But the English doctrine is now settled on an intelligible basis by a decision of the House of Lords "The words *it shall be lawful*," says Lord Cairns "are words making that legal and possible which there would otherwise be no right or authority to do They confer a faculty or power, and they do not of themselves do more than confer a faculty or power But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so"—*Julius* v *Bishop of Oxford* [1880], 5 A C, at p 222 In a subsequent case, Cotton L J says—"I think that great misconception is caused by saying that in some cases *may* means *must* or *shall* It can never mean *must* as long as the English language retains its meaning, but it gives a power, and then it may be a question in what cases where, when a judge has a power given him by the word *may* it becomes his duty to exercise it"—*Nicholls* v *Baker* (1890), 44 Ch D, at p 270 Having regard to this principle, it is often well to confer a discretion in express terms, *e g*, by saying "the court may, in its discretion," or "the Local Government may, if

* As to the occasional construction of the word "shall" as merely directory see *Re Thurlow* (1895) 1 Q B 724

if it thinks fit " But see Maxwell's *Interpretation of Statutes*, 6th Ed , p 424 *et seq* and *Craies on Statute Law*, 3rd Ed , p 252

Penalties.

12 A duty is incomplete without a sanction When an Act requires a thing to be done, the draftsman must always consider what the consequences are to be if it is not done, and whether an express penalty for disobedience is required It is a well-known rule in England that when an Act of Parliament imposes a duty of a public nature, and specifies no penalty for its breach, any breach of that duty constitutes a misdemeanour at common law punishable with fine and imprisonment But there is no trace of this rule having ever been applied in India, and s 2 of the Indian Penal Code appears to negative it The Act consequently must deal explicitly with the consequences of disobedience They may be either civil or criminal or both Criminal penalties should always be carefully considered and apportioned to the nature of the offence When there are analogous provisions in the Indian Penal Code, it is sometimes expedient to make them apply, see, *e g* , s 473 of the City of Bombay Municipal Act, 1888 (Bombay Act III of 1888), and s 3 of the Epidemic Diseases Act, 1897 (III of 1897) See also the Criminal Tribes Act, 1924 (VI of 1924), sec 24

Legislation by reference.

13 The practice of legislating by reference has often

lation only on its merits It is convenient to legislate by reference when a well known procedure can be applied, instead of creating a new and unfamiliar procedure applicable only to the particular case The multiplication of procedures is always an evil Section 25 of the General Clauses Act, 1897, *ante*, p 62, is a justifiable example of legislation by reference Unless the contrary is expressed, it applies to the recovery of all fines the familiar provisions of the Indian Penal Code and the Code of Criminal Procedure Legislation by reference is unjustifiable when it is resorted to for the purpose of avoiding the detailed consideration of proposed legislation The object of drafting is not to save trouble to the draftsman and slur over difficulties, but to make the law clear to those who have to administer it Act XXIV of 1841 is a bad example of legislation by reference It extends " to the territories of the East India Company, so far as applicable to the same," the provisions of two English Acts of Parliament (11 Geo 4 & 1 Will 4, caps 46 and 65) It is obvious that the applicability of the

complicated

complicated provisions of these Acts can only be determined authoritatively by a series of decisions of the courts Such legislation delegates the functions of the legislature to the courts to be carried into effect *ex post facto*, and at the expense of the suitors

Amending Acts

14 In England an amending Bill for the most part merely refers to the Act intended to be amended, and then proceeds to lay down the new rules to be enacted, in fact, it amends legislation as if it were a part of the common law In India a more convenient and logical practice is followed The required amendments are drafted for incorporation into the original Act and some such forms as the following are used — 'For section 21 of the said Act the following section shall be substituted namely —' or "*After section 26 of the said Act the following section shall be inserted, namely* —" The difference between the systems is illustrated by *e g*, s 8 of the Army (Annual) Act, 1885 in which it is provided that in all future copies of the principal Act—the Army Act (44 & 45 Vict, c 58)—the words directed by the amending Act to be substituted shall be printed therein and the words directed to be added thereto A similar provision is made as regards the Naval Discipline Act (29 & 30 Vict, c 109)—see *e g*, s 7 (2) of the Naval Discipline Act, 1884 (47 & 48 Vict, c 39) See also s 45 (*2*) of the Government of India Act, 1919

Consolidation Acts

15 When numerous amendments are proposed to be made in an Act, it is always well to consider whether it is not better to repeal the original Act and re enact it with the proposed amendments This course diminishes the bulk of the Statute book and makes the law easier for those who have to administer it for they have only one document to consult instead of two There is also this further advantage, that the whole Act speaks from one and the same time Under modern conditions however, this is a counsel of perfection and the course *suggested is rarely, if ever followed On the contrary*, great care is taken so to frame the title and preamble of an amending Bill as to preclude, the moving, during the passage of the Bill through the legislature of amendments not germane to the particular object or objects of the Bill as drawn The usual form of words adopted for this purpose is (in the title) "A Bill further to amend the Cantonments Act 1924 *for a certain purpose*," and (in the preamble) "Whereas it is expedient further to amend the Cantonments Act 1924 *for the purpose hereinafter appearing*" These formulæ have stood the test of actual experience, the chair having on more than one occasion ruled out of order amendments

proposed

proposed in sections of the Act to be amended which were not touched by the amending Bill as introduced. The practical impossibility of repealing and re-enacting is illustrated by recent amendments to the Code of Criminal Procedure, 1898, and the Indian Factories Act, 1911 Although the amendments made have been very numerous and important, they have been incorporated into the existing Acts in order to avoid the alteration of other parts of the Acts which it was desired to retain intact On such occasions, however, the Legislative Department invariably reprints the Act as soon as possible with the new amendments shown *in loco*

When an Act has been several times amended, there is always a strong *primâ facie* case for consolidation The Indian form of amending legislation, though it makes consolidation easy, tends rather to disguise the fact that the differ [illegible] homogeneous piece c [illegible] different times and [illegible] stance an Act passed before the General Clauses Act 1887 and amended by an Act passed after 1887 It might, in the absence of sufficient care on the part of the draftsman, so happen that, by the tacit incorporation of the General Clauses Act, the same terms in the original, and in the amending Act would have different meanings and operation In drafting a consolidating Bill, the draftsman of course must consider and, if necessary provide for the operation of the General Clauses Act or any other general legislation affecting the Act he is dealing with Thus, in *Administrator General of Bengal* v *Premlal Mullick* (1895) L R 22 I A 107 at p 114 and I L R 22 Cal 788 the Privy Council pointed out that though s 30 of Act XXIV of 1867 was re-enacted in identical words by s 31 of the Administrator General's Act 1874 (II of 1874) its operation in the latter Act was much more extensive because in the meantime the Hindu Wills Act, 1870 (XXIV of 1870) had been passed For the canons for construing a codifying or consolidating Act see *ibid* at pp 115 116 *Bank of England* v *Vagliano* (1891) A C at p 145 *per* Lord Herschell, and *Narendra Nath Sircar* v *Kamalbasini Dasi* (1895) L R 23 I A 18

Before the year 1921 no purely consolidating Act had been passed by the legislature in India although the Indian Petroleum Act 1899 (VIII of 1899) and the Glanders and Farcy Act 1899 (XIII of 1899) are Acts in which various small amendments in the existing law had been found necessary and opportunity was taken to repeal and re-enact the existing enactments

In

In 1921, however, the Statute Law Revision Committee was constituted under the presidency of the President of the Council of State, then Sir Alexander Muddiman, who was for many years Deputy Secretary and Secretary in the Legislative Department. The Statute Law Revision Committee was indeed the creature of the interest which he took in the Indian Statute book and to his energy and drafting ability are due such important measures of consolidation as the Indian Merchant Shipping Act, 1923 (XXI of 1923), the Criminal Tribes Act, 1924 (VI of 1924), and the Indian Succession Act, 1925 (XXXIX of 1925).

Acts of indemnity

16. Sometimes it is discovered that owing to a misapprehension of the law, the action of Government officers though perfectly proper in itself has been without legal authority; sometimes in political emergencies it is necessary to exercise powers in excess of, or different to those authorized by law; whilst in times of martial law doubts must inevitably arise as to the personal responsibility of Government officers for actions they have taken. On such occasions the practice is to ratify what has been done by an Act of Indemnity. For precedents of such Acts, see Act XXXIV of 1860 (indemnity for acts done during the mutiny), Act XVII of 1886, s. 5 (Jhansi and Morar), Act XIV of 1889 (indemnifying certain witnesses), the Tributary Mahals of Orissa Act, 1893 (XI of 1893), and the Indemnity Act, 1919 (XXVII of 1919). *Cf.* also Act XVII of 1895 (validating certain marriages in Bangalore) and the Assam Labour and Emigration Act, XXXI of 1927. Although it is a general principle of Law that public authorities or officers are immune from being sued in Civil Courts in respect of acts done *bona fide* in the exercise of statutory powers (*Spooner v. Judlow*, 4 M. I. A., p. 354), in view of the fact that in India there is no separate Act of universal application such as the Public Authorities Protection Act, 1892, indemnity is often specifically conferred when public officers are empowered to do acts which may infringe private rights (see notes under the heading 'Protecting Clause').

Confirming Acts.

1[illegible] ary to confirm an Act of a [illegible] ved to be *ultra vires*. Thus [illegible] the Governor General in Council to declare that certain provisions (interfering with the jurisdiction of the High Courts) contained in the City of Bombay Municipal Act, 1888 (Bom. Act III of 1888) and the Calcutta Municipal Consolidation Act, 1888 (Ben. Act II of 1888) *were "as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making*

Laws

Laws and Regulations" See also The Madras, Bengal and Bombay Children (Supplementary) Act XXXV of 1925 In spite of the fact that this particular form of words was employed in that Act of 1925, it has been held to be undesirable as purporting to make valid that which the Act of Parliament does not empower a local legislature to do The more correct form of validating legislation is, therefore, to repeal the invalid provision and re enact it as a substantive provision in an Act of the Indian legislature [See the Punjab Courts (Supplementing) Act, 1919 (IX of 1919), the Oudh Courts (Supplementary) Act, 1925 (XXXII of 1925), and the Bengal Criminal Law Amendment (Supplementary) Act 1925]

18 Statute Law Revision Acts or as they are called in India Repealing and Amending Acts are from time to time passed with the object of making formal amendments in the Statute book and expressly and specifically repealing enactments which are spent, or have ceased to be in force otherwise than by express, specific repeal, or have by lapse of time or otherwise become unnecessary The object of these Acts is to excise dead matter, prune off superfluities and reject inconsistent enactments" (see *Craies on Statute Law* 3rd Ed p 296) For the latest examples of these see Acts XXXI of 1920 XI of 1923 VII of 1924 X of 1927 XII of 1927 and XVIII of 1927 **Statute Law Revision Acts**

19 In England the practice is growing up of prefixing to Bills a memorandum explaining the purport of the proposed legislation In India since 1862 it has been the uniform practice to append to every Bill a "Statement of Objects and Reasons This convenient procedure was probably borrowed from France where a 'Projet de loi' is always accompanied by an "Expose des motifs The French courts continually resort to the "Expose des motifs" in interpreting the Acts of the legislature, but both in England and in India it is established that the proceedings of the legislature cannot be referred to in the judicial interpretation of a statute—*Administrator General of Bengal v Premlal Mullick* (1895) L R 22 I A 107 and I L R 22 Cal at pp 798, 799 The Statement of Objects and Reasons is useful historically or as a lay commentary but there are two sufficient reasons why the courts cannot rely on it in construing an Act In the first place the Statement refers to the Bill as introduced whereas it may be considerably altered before it is passed In the second place the meaning of the legislature must be deduced from the language it has actually used and not from its presumed intentions When its language is ambiguous **Statement of Objects and Reasons.**

(but

(but not otherwise) reference may be made to the previous state of the law, but even for this purpose the Statement of Objects and Reasons is not an authoritative statement of that law

Illustrations

20 In India the practice was at one time prevalent of giving illustrations in the Act itself—see, for instance, the numerous illustrations to the Indian Penal Code In dealing with abstract questions of substantive law, there is perhaps something to be said for this practice, but in ordinary legislation the practice is a dangerous one because the draftsman is apt to be content with vague or inaccurate language and to rely on illustration to define his meaning The courts too appear to differ as to how far illustrations are to be construed as binding enactments see *R* v *Cassidy* (1867) 4 Bom H C Rep C 17 *R* v *Rahimat* (1876) I L R 1 Bom 147 *Nanak Ram* v *Mehin Lal* (1877) I L R 1 All 47, and *Koylash* v *Sanatun* (1881) I L R 7 Cal 132 The Judicial Committee on a recent case held that it is the duty of a Court of Law to accept if that can be done, the illustration given as being both of relevance and of value in the construction of the text—*Mahomed Syedol Ariffin* v *Yeoh Ooi Gark* [1916] 2 A C 575 In modern times this practice has been discontinued

Specimen forms

21 The forms which follow are specimen forms for guidance in drafting As already remarked they must not be followed blindly but their applicability to each case should be considered The italics indicate the skeleton of each form while the words in Roman type are inserted by way of illustration

TITLE

Title

1 *A Bill further to amend* [the Indian Penal Code]

2 *A Bill to consolidate and amend the law relating to* [Stamps]

3 *A Bill to make provision for certain matters connected with* * * * *

4 *A Bill to repeal certain obsolete enactments and to amend certain other enactments*

Every Indian Bill has a title succinctly describing the nature of the proposed measure This title which is prefixed to the Bill and retained in the Act, must not be confounded with the short title usually conferred by the first section of the Act itself In framing the title care should be taken that it is sufficiently wide to cover

all

all the provisions of the Bill, and that it is not too vague, so as to invite amendments outside the scope of the proposed measure (See para 15 *ante*, p 94)

In England the officers of the House (Lords or Commons as the case may be) are responsible for seeing that the title covers the provisions of the Bill For the effect of the title in aiding construction see *Craies on Statute Law* pp 173—177, Ed 3, *Powell v Kempton Park Race course Company* [1897] 2 Q B C A at p 289

PREAMBLE

1 *Whereas it is expedient* [to amend (or further to amend) the Indian Penal Code] Preamble

2 *Whereas it is expedient that certain amendments should be made in the enactments specified in the Second Schedule,*

And whereas it is also expedient that certain enactments specified in the First Schedule and which are spent, or have ceased to be in force otherwise than by express repeal, or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed

In England the modern practice is to dispense with preambles in public Acts unless there are special circumstances which it is necessary to recite and most of the preambles to the older Acts have been repealed But in India it has been the practice to prefix a preamble to every Act Sometimes the preamble merely repeats the title of the Act and in such cases it seems a somewhat superfluous piece of verbiage For more definite forms of preamble see Act IV of 1880 Act IX of 1895 Act XVII of 1895, the Indian Naval Armament Act 1923 (VII of 1923) the Indian Penal Code (Amendment) Act 1923 (XX of 1923) the Steel Industry (Protection) Act 1927 (III of 1927) and many others The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood' (Thring's *Practical Legislation* p 92) As to the effect of the preamble on the construction of the Act see *Craies on Statute Law* 3rd Ed pp 180 186 *Powell v Kempton Park Race course Company* [1897] 2 Q B C A at pp 289—290 and *Kennaird v Cory and Son* [1898] 2 Q B 578 For the effect of recitals of fact in an Act, see *Craies on Statute Law*, 3rd Ed pp 40-43 429-433

ENACTING

Enacting Formula

Enacting formula.

It is hereby enacted as follows —

The corresponding English formula is a more complicated one, but its origin is historical—see Anson's *Law of the Constitution*, Vol I, 5th Ed, p 262 It runs as follows "Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows "

Short Title

Short title

1 *This Act may be called the* [Indian Penal Code, *or* Indian Stamp Act, 1899, *or* as the case may be]

2 *This Act may be called the* [Indian Tariff (Amendment) Act, 1928]

For the citation of enactments by their short titles, see s 28 of the General Clauses Act 1897, and notes thereto, *ante*, pp 64, 65 Where in any enactment it is necessary to cite or refer to an English Act of Parliament its short title should be cited and a reference to the session and chapter inserted in the margin Thus, if the Act cited be the Indian Councils Act, 1861 there should be a marginal reference—24 & 25 Vict, c 67 A similar rule applies to Indian Acts thus if the Act cited be the Indian Penal Code, the marginal reference should be—XLV of 1860

A short title should be short, for it is merely a label or index heading to the enactment in question A good example to avoid is furnished by an English Act—"The Fisheries (Oyster Crab and Lobster) Act (1877)"

Extent Clause

Extent Clause

1 *It* [i e, This Act] *extends to the whole of British India*

2 *It extends to the whole of British India, including** *British Baluchistan and the Sonthal Parganas*

3 *It*

* Before the Government of India Act of 1919 was passed the application of all enactments passed by the Indian legislature and the local legislature was barred in these two places as well as other tracts known as ' de-regulationized territories ri the District of Angul the Pargana of Spiti and the Hill District of Arakan by Regulations made under the Government of India Act 1870 (33 Vict c 3) and unless an enactment was expressed by special mention in its extent clause to extend to any of these territories it could not apply *proprio vigore* thereto [See British Baluchistan Laws Regulation 1913 s 3 the Sonthal Parganas Settlement Regulation 187- s 3 the

3 *It extends to the whole of British India, and applies also to all Christian subjects of His Majesty in India* (*Cf* Act XV of 1872)

4 *It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also—*

> (*a*) *to every Indian subject of His Majesty in any place without and beyond British India,*
>
> (*b*) *to every other British subject within the territories of any Prince or Chief in India in alliance with His Majesty,*
>
> (*c*) *to every servant of His Majesty, whether a British subject or not within the territories of any such Prince or Chief*

5 *It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in*

Angul Laws Regulation 1913 (III of 1913) s 3 the Spiti Regulation 1873 (I of 1873) s 14 and the Arakan Hill District Laws Regulation 1916 (I of 1916) s 2] There were certain other
for which Regulations
under
passed
deemed
Government a power tc
Regulations I of 1895, V c

2 None of these Regulations has been repealed but the position has altered since the passing of the Government of India Act of 1919 By notifications under section 52A (2) of the Government of India Act certain places in British India including those known as de-regulationized territories with the exception of British Baluchistan, have been declared as "backward tracts" and in some of these places the provisions of the Government of India Act which confer powers on the Indian legislature and on the local legislature to make laws for British India h
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modifications as
the Indian legis
Sonthal Parganas it is therefore necessary to make special mention of these territories The other territories mentioned above have been definitely removed from the purview of the legislature

3 For a complete list of "backward tracts" and the exceptions and modifications subject to which the Government of India Act applies to these tracts see notifications under section 52A (2) of the Government of India Act printed *in extenso* in the publication "*Government of India Act and Rules thereunder*" issued by the Legislative Department

in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions [*Cf* the Indian Income-tax Act, 1922 (XI of 1922)]

6 *It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal and at Madras, Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the Governor General in Council may, by notification in the Gazette of India declare to be High Courts to which this Act applies* [*Cf* the Indian Bar Councils Act, 1926 (XXXVIII of 1926)]

7 *It extends to the whole of British India*

Provided that the Governor General in Council may, by notification in the Gazette of India, direct that this Act or any specified part thereof shall not extend to any specified province or to any specified trust or class of trusts [*Cf* the Charitable and Religious Trusts Act, 1920 (XIV of 1920)]

8 *It extends in the first instance to the Governors' provinces, but the Local Government of any other province may, by notification in the local official Gazette, extend it to the province or any specified part or area thereof*

[This is not taken from any actual precedent and instances where an Act has only partial extension with power to extend it to other parts of British India are rare The more usual course adopted by the central legislature is to pass an Act applying to the whole of British India and leaving it to the Governor General in Council or the Local Government to bring it into force if and when he or it thinks fit See however, s 1 (3) of Act VIII of 1897]

9 For a peculiar provision which is *sui generis* but might at any time form a useful precedent *cf.* s 2 of the Special Laws Repeal Act, 1922 (IV of 1922) (Repealed by Act XII of 1927)

For general definitions of "British India" and "India," see *ante*, pp 9 and 22 For the extra territorial powers of the Indian legislature see *ante*, p 75

Where an Act simply amends another Act, it naturally has the same extent as the Act it amends and it is therefore ordinarily unnecessary to insert an extent clause in the Bill This would be necessary if an all India Act were amended for the purpose of its application

tion to a part only of British India but this is a course which the Government of India have never themselves adopted and they have deprecated it when it has been suggested by Local Governments. Outstanding exceptions are the various provincial Acts which have amended in their local application the Court-fees Act, 1870 (VII of 1870) and the Indian Stamp Act, 1899, (II of 1899). This however was necessitated by the division of subjects into 'Central' and 'Provincial' by the Devolution Rules made under s. 45A (*1*) of the Government of India Act.

An Act of the Governor General in Council *prima facie* extends to the whole of British India, though not beyond but it is usual and convenient to specify the extent explicitly.

The English practice is to make the extent clause a separate section. In India the practice is to throw the short title the extent clause and the commencement clause if any into a single section divided into three sub-sections. For the canons for construing the extent of Acts of Parliament see *ante* p. 68.

COMMENCEMENT CLAUSE

1. *It* [i e, This Act] *shall come into force at once.* Commencement

This form of commencement clause has been rendered obsolete by the enactment of s. 5 of the General Clauses Act 1897 and is now never used.

2. *It shall come into force on* [the first day of July, 1929].

3. *It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint in this behalf.*

4. *This section and sections* [2, 3, 16 and 17] *shall come into force at once and the remaining provisions of this Act shall come into force in any province on such date as the Local Government may, by notification in the local official Gazette appoint in this behalf.*

[*Cf.* section 1 (2) of the Bar Councils Act, 1926 (XXXVIII of 1926).]

5. *It shall remain in force only up to the* [thirty-first day of December 1932].

In England the commencement clause is usually inserted as a separate section. In India it is usually inserted as a sub-section in the section which contains the short title and extent.

See

See "commencement" defined by s 3 (*12*) of the General Clauses Act, 1897, *ante*, p 14, and see s 5, *ante*, p 41, for the coming into operation of Acts of the Governor General in Council

REPEALING CLAUSE

Repeal. *The Acts specified in the Schedule are repealed to the extent mentioned in the fourth column thereof.*

THE SCHEDULE

Enactments repealed

*(See section * *)*

Year	*No*	*Short title or subject*	*Extent of repeal.*

The effect of the repeal on previous transactions is dealt with by ss 6 and 7 of the General Clauses Act, 1897, *ante*, pp 43 and 46

When the Act to be repealed has a short title, the short title should be inserted in column 3

In a "Repealing and Amending Act," or, as it is called in England, a Statute Law Revision Act, a fifth column should be added to the Schedule in the Bill In this should be inserted the reason for each proposed repeal The fifth column is omitted when the Bill is passed An exceptionally wide saving clause is added to such Acts, see *e g*, Act V of 1897 Ordinarily, the saving for past transactions imported by s 6 of the General Clauses Act, 1897, is quite wide enough

A repealing clause now invariably finds a place at the end of a Bill, so that the structure of the Act in which it is contained may remain unimpaired when the clause is itself repealed

INTERPRETATION CLAUSE

Definitions *In this Act, unless there is anything repugnant in the subject or context,—*

(*1*) ["spirit"] *means* [any liquor containing alcohol obtained by distillation]

(*2*) ["will"] *includes* [a codicil]

(*3*) ["prescribed"] *means* [prescribed by rules made under this Act]

Most

Most of the definitions in common use are now contained in s 3 of the General Clauses Act, 1897, *ante*, pp 6—39 and will apply automatically to Acts and Regulations unless expressly excluded

A general definition clause should always be guarded by the formula given above, and definitions should never be given unnecessarily, as they may cause embarrassment Definitions are required only (*1*) to avoid tedious periphrases, and (*2*) to explain terms which are of ambiguous or uncertain meaning

Where a definition is intended to be exhaustive, the word "means" should be used, and when it is intended to be enumerative, the word "includes" should be used It is often useful without defining a term to point out that for the purposes of the Act, it includes some subject matter which otherwise there might be a doubt about see *ante* p 24 The expression "means and includes" should be avoided as inevitably giving rise to doubts (*cf Craies on Statute Law*, 3rd Ed p 190) but a definition such as that of "district" in s 2 (*4*) of the Code of Civil Procedure 1908 (V of 1908), is quite in order and this form frequently proves very useful as also the form ' means but does not include

An unnatural meaning should never be put upon a term by definition Suppose in an Act relating to horses it was desired to apply some of its provisions to horned cattle The proper course is to say that the provisions in question shall, with any necessary modifications apply also to horned cattle and not to say that for the purpose of the provisions in question the term "horse" means or includes horned cattle

Definitions should always be arranged in alphabetical order The alphabetical order is intelligible to every one while the logical order may be intelligible only to the draftsman

CLAUSE BINDING THE CROWN

1 *The provisions of this Act shall be binding on the Crown* **Provisions binding the Crown.**

2 *Sections* [3 and 4] *shall be binding on the Crown*

As to the power of Acts of the Governor General in Council to bind the Crown see *ante* p 77 and for precedents see s 150 of the Bankruptcy Act, 1883 (46 & 47 Vict, c 52), s 19 of the Indian Factories Act, 1881 (XV of 1881) s 17 of the Inventions and Designs Act, 1888 (V of 1888), s 22 of the Indian Arbitration

Act,

Act, 1899 (IX of 1899), s 4 of the Indian Merchant Shipping Act (XXI of 1923), and s 33 of the Indian Boilers Act (V of 1923) *Cf* however, at the same time s 2 of the Land Acquisition (Mines) Act, 1885 (XVIII of 1885), which saves the rights of the Government, and the Crown Grants Act, 1895 (XV of 1895)

RULE-MAKING CLAUSE

Power to make rules

1 (*1*) *The* [Governor General in Council *or* Local Government] *may make rules for the purpose of giving effect to the provisions of this Act*

(*2*) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely* —

(*a*)

(*b*)

(*c*)

(*3*) *All rules made under this Act* [or *section*] *shall be published in the Gazette of India* [or, *local official Gazette*, as the case may be], *and, on such publication, shall have effect as if enacted in this Act*

3 *The* [Governor General in Council] *may, after* [or *subject to the condition of*] *previous publication, make rules, etc*

For a form giving power to both the Governor General in Council and the Local Government to make rules, see s 19, Act VII of 1929

4 In some enactments, rules are made subject to the approval of the legislature Examples of such provisions are s 8 of the Cotton Transport Act III of 1923 and sec 21 (*2*) of the Indian Emigration Act (VII of 1922) In England the enactments conferring rule making powers frequently require that rules so made are to be laid before Parliament and can be revised or rescinded by a resolution (See sec 129 A of the Government of India Act)

Provisions to the effect that rules made under an Act are to be laid before the legislature and are liable to be rescinded or modified by a resolution [see sec 221 of the Bombay City Municipalities Act 1925 (XVIII of 1925)] have been thought to be *ultra vires* of the local legislature on the ground that the Indian and local legislatures have no power to pass resolutions binding on the executive Whatever the merits of this contention may be (the question has not yet come before the Courts) such a provision must lead to inconvenience in practice and should be avoided if possible

For

For the effect of the enactment that rules shall have the same effect as if enacted in the Act, see the ruling of the House of Lords in *Institute of Patent Agents* v. *Lockwood*, referred to, *ante*, p 83 *Cf* s 4 (3) of the Electricity Act, 1887 (XIII of 1887). This provision is often omitted, in which case, instead of sub-clause (3) in the illustration above, the words "by publication in the Gazette of India [*or* local official Gazette]" are inserted after the word "may" in sub-clause (1)

It is to be noted that by virtue of the General Clauses Act, 1897, the formulæ given above draw after them various consequences, which need not be expressly stated, but which must be expressly negatived, if it is desired to exclude or vary them By s 21, the power to "make" rules includes a power to add to, alter or revoke them By s 20, any definitions given by the Act will be imported into the rules made under it, so that it is unnecessary to repeat them By s. 23, if the rule-making power is given "subject to the condition of previous publication," all the provisions of that section as to previous publication thereupon apply. Compare the provisions of the Rules Publication Act, 1893 (56 & 57 Vict , c. 66 S 2 of that Act provides for making interim rules in cases of emergency By s 24 of the General Clauses Act, 1897, if rules have been made under an Act *which is repealed and re-enacted, they will still continue in force, and, if it is desired to supersede them,* that must be done expressly And by s 25, if the rules provide for the imposition of fines, the provisions of the Indian Penal Code and the Code of Criminal Procedure for the time being in force in relation to fines will apply automatically

PROTECTING CLAUSE.

No suit, prosecution or other legal proceeding whatsoever shall be entertained in any Court against any officer [or person] for anything in good faith done or intended to be done in pursuance or execution of this Act. Protection to officers, etc.

For further examples, see s. 4 of the Epidemic Diseases Act, 1897 (III of 1897), s. 74 of the Indian Forest Act (XVI of 1927), and s. 17 of the Indian Bar Councils Act, XXXVIII of 1926. Judicial officers are protected by Act XVIII of 1850. But, where an Act gives new or unusual executive powers, it is often advisable to insert an express protection to the persons who act under it. For the meaning of "good faith" in Acts passed after the General Clauses Act, 1897, see s. 3 (20), *ante*, p 17. *Cf.* the provisions of the Public Authorities Protection

Act,

Act, 1893 (56 & 57 Vict, c 61), which regulates suits and proceedings against public officers when such suits are allowed to be brought

SPECIAL SAVING CLAUSE

Powers of Act to be cumulative.

1 All powers, rights and remedies given by this Act shall be in addition to, and not in derogation of, any other powers, rights and remedies conferred by any Act, law or custom, and all such other powers, rights and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not been passed

2 Nothing in this Act shall be in derogation of any power otherwise vested in [the Local Government], *and the* [Local Government] *may exercise for the purposes of this Act all powers otherwise vested in it in relation to* * * *

Saving for power to proceed under other law

3 If the Court before whom a person is charged with an offence punishable under this Act thinks that proceedings ought to be taken against him for the offence under any other enactment, the Court may adjourn the case to enable such proceedings to be taken

Saving of civil remedy

4 A proceeding or conviction for any act declared by this Act to be an offence [*or punishable by or under this Act*] *shall not affect any civil remedy to which any person aggrieved by such act may be entitled*

Saving as to liability for nuisance

5 *Nothing in this Act shall legalize any act which would, but for this Act, be a nuisance or be otherwise contrary to law, or deprive any person of any remedy by suit, prosecution or otherwise, to which he would have been entitled if this Act had not been passed*

Saving.

6 *Nothing in this Act shall be deemed to affect—*

(a) *the terms or incidents of any transfer or disposition of property made or effected before the day of ,*

(b) *the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,*

(c) *any right, title, obligation or liability already acquired, accrued or incurred before such date,*

(d) *any remedy or proceeding in respect of such right, title, obligation or liability, or*

(e) *anything done in the course of any proceeding pending in any Court on the aforesaid date,*

and

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed

By s 3 (2) of the General Clauses Act, 1897, "act" includes a wrongful omission To a great extent the above forms of savings are declaratory, but it is sometimes convenient to insert them expressly. For further forms of special savings, see s 18 of the Merchandise Marks Act, 1889 (IV of 1889)

The ordinary [illegible]
for in repeals by [illegible]
(*ante*, p 42), a [illegible]
ordinary purpose [illegible]
clause see the [illegible]
Amending Acts, *e g*, Act V of 1897

Bar Of Civil Suits

Examples mentioned under the heading 'protecting clause' show how officers can be absolved from being sued in Civil Courts in respect of acts done or purporting to be done in the exercise of official duties Special tribunals are at times created, and the jurisdiction of the ordinary Civil Courts to interfere with their decisions is excluded either by an express enactment or impliedly

Bar Of Jurisdiction Of A Civil Court Expressly

The decision of the tribunal shall be final and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal (s 45, Delhi University Act VIII of 1922)

See also s 67, Act XI of 1922, and s 3 (5), Act VIII of 1923

Provision As To Notices

Form of notices, etc.

All notices and orders under this Act shall be in writing, and where any notice, order or document under this Act requires authentication by the [municipal committee] *the signature thereof by the* [secretary to the municipal committee] *shall be sufficient authentication.*

Compare the Public Health (London) Act, 1891 (54 & 55 Vict, c 76), s 127, and see "writing" defined by s 3 (58) of the General Clauses Act, 1897, *ante*, p 39

Provision As To Service

Service of notices, etc.

(1) Any notice, order or other document required or authorized to be served under this Act may be served either—

(a) by delivering it [or a true copy of it] to the person on whom it is to be served, or

(b) by

(*b*) *by leaving it [or a true copy of it] at the usual or last known place of abode of that person; or*

(*c*) *by forwarding it by post in a cover addressed to that person at his usual or last known place of abode, or*

(*d*) *if addressed to the owner or occupier of premises by delivering it [or a true copy of it] to some person on the premises, or, if there is no person on the premises who can be so served, then by fixing it [or a true copy of it] on some conspicuous part of the premises*

(2) *Any notice, order or other document by this Act required or authorized to be served on the owner or occupier of premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) without further name or description*

(3) *Any notice required or authorized for the purposes of this Act to be served on* [the municipal committee] *shall be deemed to be duly served if delivered at or sent by post to the office of* [the municipal committee] *addressed to that authority* [or to their secretary]

Compare the Public Health (London) Act, 1891 (54 & 55 Vict, c 76), s 128, the Indian Railways Act, 1890 (IX of 1890), ss 139 141, the Land Acquisition Act 1894 (I of 1894), s 45, and the Cantonments Act, 1924, s 254 For service by post, see s 27 of the General Clauses Act, 1897, *ante*, p 64

SPECIAL COMMISSION

Powers of Commission *Whereas a Commission has been issued by the Governor General in Council whereby [A, B, C, D, E, and F], hereinafter referred to as "the Commissioners," have been directed to inquire into and report upon* * * *

And whereas, for the effectual conduct of the inquiry, it is expedient to confer special powers upon the Commissioners,

It is hereby enacted as follows —

1 *The Commissioners shall have all such rights, powers and privileges as are vested in* [the High Court] *in relation to any civil suit in respect of the following matters —*

(*a*) *the enforcing the attendance of witnesses and the examining them on oath,*

(*b*) *the*

(b) the compelling the production of documents, and

(c) the punishment of persons guilty of contempt

And a summons signed by one of the Commissioners may be substituted for, and shall be equivalent to, any formal process capable of being issued in any suit for enforcing the attendance of witnesses or compelling the production of documents

2 A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one of the Commissioners, and shall specify the prison to which the offender is to be committed, and shall not authorize the imprisonment of the offender for a period exceeding [three] *months* Committal.

3 *(1) Every person examined as a witness in an inquiry before the Commissioners who, in the opinion of the Commissioners, makes a full and true disclosure touching all the matters in respect of which he is examined, shall be entitled to receive a certificate signed by the Commissioners* [*or one of them*] *stating that the witness has made a full and true disclosure as aforesaid* Indemnity to witnesses

(2) If any civil or criminal proceeding is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined, the Court having cognizance of the case shall on proof of the certificate stay the proceeding, and may in its discretion award to the witness such costs as he may be put to in or by reason of the proceeding

(3) Provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding except in the case of a witness accused of having given false evidence before the Commissioners or any of them

Compare the Metropolitan Board Commission Act, 1888 (51 Vict c 6), and the Special Commission Act (51 & 52 Vict, c 35) See also *Ex* King Thebaw's Act, 1895 (XX of 1895) Other clauses may be necessary to provide for vacancies in the Commission or other matters, and the applicability of the skeleton clauses given above must be considered in each case For a precedent of power to appear by recognized agent or pleader, see the Code of Civil Procedure 1908 (V of 1908), Schedule I, Order III

PENAL CLAUSE

Whoever, in contravention of the provisions of this section, * * * * *, shall be punishable with imprisonment for a term which may extend to three months* Ordinary penal clause.

months, or with fine which may extend to one hundred rupees, or with both

Penalty for subsequent conviction.

Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

Compare s 58 (2) of the Indian Post Office Act, 1898 (VI of 1898), and ss 22 and 23 of the Criminal Tribes Act, 1924 (VI of 1924)

Penalty for continuing breach.

Whoever commits a breach of the provisions of this section shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing breach, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first [*or after the date of first conviction*] *during which the breach continues* [or *in regard to which he is proved to have persisted in the breach*]

Compare s 63 of the Thames Navigation Act, 1866 (29 & 30 Vict, c 89), s 86 of the Friendly Societies Act, 1896 (59 & 60 Vict, c 25), and ss 124 and 283 of the Cantonments Act, 1924 (II of 1924) For the construction of provisions penalizing continuing breaches, see *In re Limbaji Tulsiram* (1897), I L R 22 Bom 766, and *Queen-Empress* v. *William Plumner* (1897), *ibid*, 841.

Exempting Clauses

Exempting clauses

For forms of clauses giving power to exempt persons or things from the operation of an Act, see s 35 of the Court-fees Act, *1870 (VII of 1870)*, s 23 of the Sea Customs Act, 1878 (VIII of 1878), s 5 of the Indian Income tax Act, 1886 (II of 1886), s 9 of the Indian Stamp Act, 1899 (II of 1899), s 21 of the Indian Petroleum Act, 1899 (*VIII of 1899*), s 18 of the Indian Lighthouse Act, 1927 (XVII of 1927), and s 20 of the Indian Insurance Companies Act, 1928 (XX of 1928)

Schedules

Schedules

For the ordinary form of schedule of repeals, see *ante*, p 104 A schedule is an integral part of an Act—see *ante*, p 33, and its use is a mere matter of convenience Matters of principle should not be included in a schedule, which ought to be confined to matters of detail, such as forms, catalogues, tables of fees or rates and similar matters See, for example, the schedules to the Code of Criminal Procedure, 1898 (Act V of 1898),

and

and the Workmen's Compensation Act, 1923 (VIII of 1923) Compare, however, the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) There must, of course, be a substantive clause in the Bill referring to the schedule

STATUTORY NOTIFICATION

I The following draft of certain rules, which it is proposed to make in exercise of the powers conferred by sub section (*1*) of section 191 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), is published, as required by sub section (*4*) of the said section, for the information of all persons likely to be affected thereby, and notice is hereby given that the draft will be taken into consideration by the Governor General in Council on or after the 1st January, 1929 Any objection or suggestion which may be received from any person with respect to the draft before the said date will be considered by the Governor General in Council

Notification publishing for criticism rules which require ' previous publication". *See* General Clauses Act 1897 (X of 1897) s 23

DRAFT RULES

* * * * *

II In exercise of the powers conferred by section 6 of the Cotton Industry (Statistics) Act 1926 (XX of 1926) the Governor General in Council is pleased to make the following rules —

Notification making rules under an Act.

1 These Rules may be called the Cotton Industry (Statistics) Rules, 1926

* * * * *

III In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act 1874 (XIV of 1874), as in force in the Pargana of Manpur the Chief Commissioner is pleased to extend the ' United Provinces Town Areas Act 1914 (U P Act II of 1914)" to the said Pargana, subject to any amendments to which the said Act is for the time being subject in the territories to which it generally applies and subject also to the following modifications namely—

Notification extending an enactment with modifications

* * * * *

IV In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902 and of all other powers enabling him in that behalf and to provide for the administration of the Administered Areas in the Hyderabad State namely the Cantonments of Secunderabad and Aurangabad the Hyderabad Residency Bazars and the lands in the Hyderabad State occupied by His

Notification under the Indian (Foreign Jurisdiction) Order in Council, 1902

Exalted

Exalted Highness the Nizam's Guaranteed State Railway system, by the South East main line of the Great Indian Peninsula Railway, by the broad gauge North West line of the Madras and Southern Maratha Railway, by the Secunderabad Gadwal and Gadwal Hyderabad Frontier near the Kurnool sections of the Secunderabad Gadag Railway and by the Kazipet Balharshah Railway (hereinafter styled the 'Railway Lands'), the Governor General in Council is pleased in supersession of the *notification of the Government of India in the Foreign* Department No 582 I B, dated the 22nd March 1913 and of all notifications amending the same to apply the enactments specified in the first column of the schedule hereto annexed to such of the said Administered Areas as are specified in the second column thereof in so far as the same may be applicable thereto and subject to any amendments to which the enactments are for the time being subject in British India

Provided, first that in the enactments as so applied (except where the context or the modifications hereinafter referred to otherwise require) references to a Local Government or the Chief Controlling Revenue Authority shall be read as referring to the Resident at Hyderabad references to a Secretary to a Local Government as referring to the Secretary to the Resident at Hyderabad references to a High Court as referring to the Court of the Resident at Hyderabad and references to British India or to a province or to the territories subject to or administered by a Local Government as referring to the Administered Area or Areas to which the enactment wherein the expression occurs has been applied

Provided secondly that the further modifications and restrictions set forth in the said schedule shall be made in the enactments as so applied

Provided thirdly that for the purposes of facilitating the application of the said enactments any Court in any area to which the same may have been applied may construe the provisions thereof and any notifications, orders, rules forms or bye laws thereunder with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before the Court

Provided fourthly, that subject to the provisions of this notification the Resident at Hyderabad may direct by what officer any authority or power under the said enactments shall be exercisable

Provided fifthly that all civil and criminal and other proceedings pending at the date of this notification shall be carried on as if this notification had not been issued, but

but that, save as aforesaid, all proceedings commenced, officers appointed or authorized, jurisdictions or powers conferred or confirmed, notifications published, rules or bye laws made, orders passed and things done under any of the enactments specified in the notifications hereby superseded in the said Administered Areas shall be, as far as may be, deemed to have been respectively commenced, appointed or authorized conferred or confirmed, published, made, passed and done, under the corresponding enactments specified in this notification

* * * * *

V In exercise of the powers conferred by sub section (*1*) of section 4 of the Cantonments Act, 1924 (II of 1924) and with the previous sanction of the Governor General in Council, the Governor of Burma in Council is pleased to declare his intention to exclude from the Rangoon Cantonment the area specified in the schedule hereto annexed

Notification by a Local Government with the previous sanction of the Governor General in Council

* * * * *

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